

COMPOSTING AGREEMENT

This Composting Agreement (the "**Agreement**") is made and entered by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation organized and existing under and by virtue of Article XX of the Constitution of the State of Colorado (hereinafter referred to as "**City**"), and **WASTE MANAGEMENT OF COLORADO, INC.**, a Colorado corporation with its principal place of business at 5500 S. Quebec Street, Suite 250, Greenwood Village, CO 80111 (hereinafter referred to as "**WMC**" or "**Contractor**").

WITNESSETH:

WHEREAS, on or about January 9, 1998, City and WMC (collectively, the "**Parties**" and each a "**Party**") entered into a Landfill Agreement (the "**Landfill Agreement**"), Contract Control No. GC8Y001, as amended July 14, 2003, pursuant to which WMC performs waste disposal and related functions at the Denver Arapahoe Disposal Site (the "**DADS**") which the City owns;

WHEREAS, Section 2.1(f) of the Landfill Agreement provides that "WMC shall carry out all waste disposal and other operations reasonably necessary or incident thereto, including but not limited to, cover stock piling, fill and cover placement and compaction, drainage, pollution and nuisance prevention. Any other activities at the Site, including but not limited to recycling, storage, treatment, or special waste handling shall only be conducted pursuant to a separate agreement between Denver and WMC";

WHEREAS, a Certificate of Designation authorizing a sanitary landfill operation was issued to the City by the Board of County Commissioners for Arapahoe County, Colorado on September 16, 1968 and amended June 17, 2003 by Resolution No. 03085. The Certificate of Designation was further amended on August 19, 2010 (CD03-001) to authorize a class 1 composting facility in Sections 5 and 32, Township 5 South, Range 65 West of the 6th P.M.;

WHEREAS, recycle/reuse of solid waste rather than land-filling offers numerous well-recognized public health, welfare and environmental benefits;

WHEREAS, the City wishes to facilitate recycle/reuse of non-hazardous organic solid waste even though disposal by land-filling may be less expensive at this time;

WHEREAS, the Parties desire to evaluate the methodology, costs and commercial market for composting within the Denver metropolitan area. Accordingly, the terms and conditions recited herein are written to facilitate that evaluation and carry no precedential effect for any subsequent agreement for the recycle or reuse of nonhazardous organic waste; and

WHEREAS, WMC has constructed a Composting Facility in accordance with the Engineering Design and Operation Plan approved by the Colorado Department of Public Health and Environment ("CDPHE").

WHEREAS, in accordance with Section 2.1(f) of the Landfill Agreement, the Parties wish to execute this Agreement so that WMC may, either itself or through subcontractors, perform processing activities upon compostable non-hazardous organic solid waste and liquid waste at the DADS.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements hereinafter contained, the Parties agree as follows:

1. Term

- 1.1. The term ("**Term**") of this Agreement will begin January 1, 2016 and extend until December 31, 2018. The Term may be extended by written agreement of the Parties. WMC or the City

may terminate this Agreement for convenience after providing one-hundred eighty (180) days written notice to the other Party.

2. Composting Facility

- 2.1. The “**Composting Facility**” is an approximately 100-acre portion of DADS, as identified in the attached **Exhibit A**, incorporated by reference herein.
- 2.2. This Agreement is made subject to and shall be governed by the terms of the Landfill Agreement. In the event of any conflict between this Agreement and the Landfill Agreement, this Agreement shall control solely with respect to the subject matter contained herein.

3. WMC Responsibilities.

- 3.1. WMC shall operate the Composting Facility in accordance with the Engineering Design and Operations Plan (EDOP) as approved by CDPHE May 26, 2011 and as amended with approval by CDPHE January 28, 2013 and the Regulations Pertaining to Solid Waste Disposal Sites and Facilities, 6 CCR 1007-2, Part 1 (Amended by the Colorado Solid and Hazardous Waste Commission (Amended 05/15/12, effective 06/30/12) (the “**Solid Waste Regulation**”), the Certificate of Designation issued by Arapahoe County, and all other federal, state and local requirements. Future requests for EDOP amendment will be submitted to the City for prior review and comment; future amendments approved by CDPHE will be provided to the City for record purposes.
- 3.2. WMC shall make all submittals required by CDPHE and Arapahoe County and will provide one copy of each document to the City.
- 3.3. WMC shall: accept and manage “Compostable Material”, as that term is defined in **Exhibit B**; process Compostable Material to create a saleable compost product, bag or otherwise handle the compost product, and sell or otherwise distribute the compost product, grind wood waste for direct sale without composting, and conduct activities reasonably and necessarily incident thereto at the Composting Facility (hereafter “**Composting Activities**”).
- 3.4. WMC shall dispose of all un-composted waste at the Denver Arapahoe Disposal Site.
- 3.5. WMC shall provide all superintendence; labor, including operators, spotters, maintenance mechanics and incidental labor; and materials, equipment, tools, supplies and utilities required for the Composting Activities.
- 3.6. WMC shall close the Composting Facility at the conclusion of its Composting Activities or upon termination of this Agreement, whichever is first, in full compliance with, the Closure Plan approved by CDPHE, the Certificate of Designation, the Solid Waste Regulation, and all other federal, state and local requirements at its own cost and in a manner that will allow for other waste disposal operations and other land uses at the Landfill Agreement Site.
- 3.7. WMC shall provide post-closure care and maintenance in full compliance with the Post-Closure Plan approved by CDPHE, the Certificate of Designation, the Solid Waste Regulation, and all other federal, state and local requirements.
- 3.8. WMC hereby represents, warrants and covenants as follows:
 - 3.8.1. WMC has expertise in performing the Composting Activities and shall faithfully perform the Composting Activities in accordance with the standards of care, skill, training, diligence, and judgment provided by highly competent individuals performing services of a similar nature to those described in this Agreement and in accordance with the terms of this Agreement.

3.8.2. WMC shall not use, store, or handle Hazardous Materials on the Composting Facility or cause a release of Hazardous Materials on the Composting Facility 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 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.

3.8.3. Each of the preceding responsibilities shall be performed by WMC at no expense to the City.

3.8.4. These representations shall survive termination of this Agreement.

4. Responsibilities of Denver.

4.1. The City shall allow WMC, exclusively, to use the Composting Facility for Composting Activities.

5. Compensation and Method of Payment.

5.1. Pursuant to Section 6.1 of the Landfill Agreement, WMC pays the City a percentage of "gross disposal revenue...received by WMC in connection with all of the non-hazardous waste disposal operations" at the DADS, presently twenty one percent (21%) (the "**Landfill Royalty Fee**"). Pursuant to Section 6.2 of the Landfill Agreement, WMC pays to the City a minimum royalty in the event that the actual royalty payment calculated in accordance with Section 6.1 fails to meet or exceed the minimum specified. For purposes of clarification, said Royalty Fee provisions shall not apply to gross revenue from WMC's Composting Activities except as specifically provided in this Section 5.

5.2. Composting Royalty. WMC shall pay the City and the City shall accept from WMC as monetary compensation for the rights, duties and obligations arising under and by virtue of this Agreement, an amount of money equal to and computed as eight (8%) percent of its gross revenue (the "**Composting Royalty Fee**") from receipt or diversion (hereafter "receipt") on or after January 1, 2016 of Compostable Material, excluding amounts collected under the EMF, the solid waste user fee or any other externally mandated surcharge applicable to the receipt of Compostable Material or disposal of non-hazardous waste at the Composting Facility or the Landfill Agreement Site, respectively. The 8% Composting Royalty Fee shall apply towards the minimum Landfill Royalty Fee payment. The Composting Royalty Fee shall be computed at the end of and for each calendar quarter and paid to the City no later than forty-five (45) days after the end of each such quarter. For purposes of determining the Composting Royalty Fee, "gross revenue" does not include any revenue from the sale or other disposition of compost product.

Any Composting Royalty Fee payments due to City under this Agreement and not received by the City on the date when due shall, beginning ten days following written notice by Denver of such delinquency, be subject to a service charge on the amount due at a rate of 2% per month compounded daily computed from the date due until the date paid. All payments shall be made to the City without set off, and without necessity of invoice or prior notice by City.

- 5.3. The City is not obligated to make any payments to WMC under this Agreement. The City is not obligated to execute an Agreement or any amendments for any further services, including any continuation of this 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. Rates and Charges for Compostable Materials and Compost Product.

- 6.1. Rate Setting. WMC shall have full and exclusive control of the rates to be charged to third party users at the Composting Facility for receipt of Compostable Materials. The composting rates at the Composting Facility shall, however, be consistent and competitive with rates at other Denver Metro area compost facilities. WMC shall be required to charge its own trucks entering upon the site a rate consistent with good business practices and rates charged to Denver and the public.
- 6.2. Denver Rates. Denver shall be entitled to receive the lowest, best, gate rate for delivery of Compostable Material, including rates charged to WMC or any WMC parent or affiliate. Rates shall be based on the quantity of Compostable Material contained in the particular delivery vehicle, or shall be based on actual weight of the Compostable Materials. Rates provided to Denver shall apply to all Compostable Material collected by Denver whether directly or by franchisees or contracted haulers so long as the invoice for such receipt is sent to and paid directly by Denver. WMC shall cooperate with the City in providing control and audit of composting fees invoiced to the City by franchisees or contract haulers.
- 6.3. Denver Purchasing Rates. Denver shall be entitled to receive the lowest, best, purchase rate for purchase of compost product, including rates charged to WMC or any WMC parent or affiliate. The City will be provided advance notice of materials and amounts that will either be accepted or sold at no costs or reduced costs. The City anticipates these offers will be limited to a) testing of materials for compostability, and b) offered to local governments or community organizations as part of WMC's continuing public relations efforts.
- 6.4. The rate requirements in this Section 6 shall not apply with regard to materials received from or sold/donated to local governments or community organizations as part of WMC's public relations efforts. Additionally, there shall be no Composting Royalty Fee owed with regard to such material.

7. Reports and Recordkeeping.

- 7.1. WMC shall prepare and maintain records of the Composting Activities, including all data and reports delineated in this Section 7. WMC may mark confidential and/or proprietary data and reports in accordance with Section 8.

WMC shall submit a non-confidential and non-proprietary overview of the information listed below to the Manager on a quarterly basis.

7.1.1. Quarterly Summaries:

- Profit and loss statements that include both incoming material and outgoing product volumes and revenues, operational fees, and summaries of backup supporting information.
- The amount and type of compostable material received, processed, and remaining on site.
- The quantity of finished product used on site, sold, distributed off site, and remaining on site.

- The type and quantity of any incoming material or outgoing product that was at no charge or less than CCoD rates, with an explanation statement.

7.1.2. Quarterly Detailed Data:

- Customer summary reports and ticket reports for incoming material that would include information such as customer (including WM), date, material rate, rate quantity, yardage, tonnage, material revenue, tax revenue, surcharge revenue, other revenue, total, and associated back up documentation / information.
- Sales reports for outgoing material that would include information such as purchaser (including WM), date, material rate, rate quantity, yardage, tonnage, material revenue, tax revenue, surcharge revenue, other revenue, total, and associated back up documentation / information.
- Information and documentation of any materials transferred from the landfill to the organics processing facility, and any materials transferred from the organics processing facility to the landfill.
- Calculations and back up documentation and information for royalty payments to City and County of Denver.
- Other fees charged for other related organic recycling services.

8. Proprietary or Confidential Material; Open Records Act

- 8.1. The reports and information provided or produced under this Agreement may be subject to the Colorado Open Records Act., § 24-72-201, et seq., (2011). WMC may mark any reports or documents that contain proprietary or confidential commercial or financial information as “**Confidential**”. If the City receives a request for disclosure of such information, the City shall advise WMC in order to give the opportunity to object to the disclosure of proprietary or confidential material. In the event of the filing of a lawsuit to compel such disclosure, the City will tender all such material to the court for judicial determination of the issue of disclosure and WMC may intervene in such lawsuit to protect and assert its claims of privilege and against disclosure of such material or waive the same. WMC agrees to defend, indemnify and save and hold harmless the City, its officers, agents and employees, from any claim, damages, expense, loss or costs arising out of WMC’s intervention to protect and assert its claim of privilege against disclosure under this Section 6 including, but not limited to, prompt reimbursement to the City of all reasonable attorney fees, costs and damages that the City may incur directly or may be ordered to pay by such court.
- 8.2. Notwithstanding any other term of this Agreement, the Contractor is solely responsible for marking each page of all materials it believes contains proprietary or confidential information that it provides or causes to be provided to the City, including its officers, agents and employees, under this Agreement.

9. Structures & Improvements.

- 9.1. WMC may construct or install structures or buildings, or modify any existing structures or buildings, on the Property related to the Composting Activities without prior written approval of the City. WMC is expressly given the right at any time within ninety (90) days after termination or expiration of this Composting Agreement to remove from the Site any product and unprocessed material, equipment, personal property or improvements of any kind and nature other than permanent buildings or fixtures which were purchased or placed upon the Site by WMC. Upon expiration of said ninety (90) day period, at the City’s option, any of the above items remaining on the Site shall become the property of the City, and the final remaining items shall be removed by WMC within a reasonable time not to exceed sixty (60) additional days for items of personal property and one year for “permanent” buildings.

10. Independent Contractor.

- 10.1. WMC is an independent contractor who will provide Composting Activities. Neither WMC nor any of its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever.
- 10.2. All Composting Activities will be performed under the sole supervision, management, direction and control of WMC. WMC 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 WMC.

11. Termination.

- 11.1. The City has the right to terminate the Agreement with cause upon written notice effective immediately; provided, however, before City may terminate the Agreement, WMC shall have the right to cure a breach within ten (10) days after receiving written notice of the breach. However, nothing gives WMC the right to perform services under the Agreement beyond the time when its services become unsatisfactory to the Manager.
- 11.2. Notwithstanding the preceding paragraph, the City may terminate the Agreement if WMC 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, kick backs, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with WMC's business. Termination for the reasons stated in this paragraph is effective upon receipt of notice.
- 11.3. Upon termination of the Agreement, with or without cause, WMC shall have no claim against the City by reason of, or arising out of, incidental or relating to termination, except for compensation for work duly requested and satisfactorily performed as described in the Agreement.
- 11.4. If the Agreement is terminated, the City is entitled to and will take possession of all materials, equipment, tools and facilities it owns that are in WMC's possession, custody, or control by whatever method the City deems expedient. WMC shall deliver all reports and documents in any form that are required under this Agreement and all other items, materials and documents that have been paid for by the City to the City. These documents and materials are the property of the City. WMC shall mark all copies of work product that are incomplete at the time of termination "DRAFT-INCOMPLETE".

12. Insurance. (CCoD Risk to review and update as needed)

- 12.1. **General Conditions:** WMC agrees to secure or include under existing policies, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. WMC shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the above-described policies be canceled or before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement and shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, WMC shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract

number. If any policy is in excess of a deductible or self-insured retention. WMC shall be responsible for the payment of any deductible or self-insured retention without contribution from the City. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of WMC. WMC shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

- 12.2. **Proof of Insurance:** WMC shall provide a copy of this Agreement to its insurance agent or broker. WMC may not commence services or work relating to the Agreement prior to placement of coverage. WMC certifies that the certificate of insurance attached as Exhibit C, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City's contract number ENVHL-201204116-00 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 WMC's breach of this Agreement or of any of the City's rights or remedies under this Agreement.
- 12.3. **Additional Insureds:** For Commercial General Liability, Auto Liability and Pollution Legal Liability, Contractor and subcontractor's insurer(s) shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.
- 12.4. **Waiver of Subrogation:** For all coverages, WMC's insurer shall waive subrogation rights against the City.
- 12.5. **Subcontractors and Subconsultants:** All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of WMC. WMC shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. WMC agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.
- 12.6. **Commercial General Liability:** WMC shall maintain a Commercial General Liability insurance policy with limits of \$5,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$5,000,000 policy aggregate.
- 12.7. **Business Automobile Liability:** WMC shall maintain limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement. If transporting hazardous material or regulated substances, WMC shall carry a pollution coverage endorsement and an MCS 90 endorsement on their policy. Transportation coverage under the Contractors Pollution Liability policy shall be an acceptable replacement for a pollution endorsement to the Business Automobile Liability policy.
- 12.8. **Workers' Compensation/Employer's Liability Insurance:** WMC shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. WMC expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of WMC's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date WMC executes this Agreement.

12.9. **Pollution Legal Liability:** WMC shall maintain limits of \$1,000,000 per occurrence and \$2,000,000 policy aggregate. Policy to include bodily injury; property damage including loss of use of damaged property; defense costs including costs and expenses incurred in the investigation, defense or settlement of claims; and clean up costs. Policy shall include a severability of interest or separation of insured provision (no insured vs. insured exclusion) and a provision that coverage is primary and non-contributory with any other coverage or self-insurance maintained by the City.

12.10. Additional Provisions:

12.10.1. For Commercial General Liability, the policy must provide the following:

- (i) That this Agreement is an Insured Contract under the policy;
- (ii) Defense costs are in excess of policy limits;
- (iii) A severability of interests or separation of insureds provision (no insured vs. insured exclusion); and
- (iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.

12.10.2. For claims-made coverage:

- (i) The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier.
- (ii) WMC shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, WMC will procure such per limits and furnish a new certificate of insurance showing such coverage is in force.

13. Indemnity.

13.1. WMC shall hold harmless, indemnify and defend Denver, its officers, employees, representatives and agents, from and against any and all claims, actions, losses, damages, injuries, liabilities, penalties, fines, forfeitures, costs and expenses (including, but not limited to, attorneys' fees and court costs) to the extent directly or indirectly caused by or arising out of the negligence of WMC, its employees or subcontractors in the performance of its obligations under this Agreement, including injury to persons (including death), damage to property, any and all costs resulting from contamination, and any violation or alleged violation of statutes, ordinances, orders, rules or regulations of any governmental entity or agency with jurisdiction. WMC shall have the right to control the defense and resolution of any claim in which damages are sought which may be the ultimate responsibility of WMC. Denver agrees to reasonably cooperate with WMC in the defense of any claim arising under this Agreement, so long as Denver is not required to incur any direct expenses such as the retention of outside experts or consultants. WMC's indemnity contained herein shall not extend to Section 4 unless it relates to activities actually conducted by WMC, nor shall it extend to any claim, action, loss, damage, injury, liability, penalty, fines, forfeitures, cost or expense to the extent caused by or arising out of any act or omission of Denver, its agents, contractors or subcontractors, in conducting activities at the Composting Facility pursuant to this Agreement.

14. Financial Responsibility.

14.1. Waste Management will provide the City and County of Denver a Surety Bond in the amount of \$100,000.00 to ensure performance. WMC and the City will review this amount based on operational volumes and outputs and adjust as necessary annually.

14.2. For purposes of clarity, the obligations of Waste Management under Section 3.0 of the Landfill Agreement remain in full force and effect and are in no way diminished by this Agreement.

15. Wage Rate Requirements.

- 15.1. The Composting Facility is not being constructed by or on behalf of the City, for any agency of the City, financed in whole or part by the City, or financed in whole or part by any agency of the City. WMC will own the facilities it constructs on land owned by the City at DADS, subject to the terms of the Landfill Agreement and this Composting Agreement. WMC agrees to comply with and be bound by all requirements and conditions of the City's Payment of Prevailing Wages Ordinance, Sections 20-76 through 20-79, D.R.M.C. and any determinations made by the City pursuant thereto in relation to:
- 15.1.1. Activities performed by heavy equipment operators employed by WMC.
 - 15.1.2. WMC employees who are responsible for daily preventive maintenance (classified as Oiler) on a blended rate that is based on a wage, which is 25% of the Prevailing Wage and 75% of WMC's internal rate for this classification.

16. Advertising and Publications.

- 16.1. WMC is encouraged to advertise the availability of the Composting Facility.
- 16.2. An acknowledgment of City support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this Agreement, as follows:

Acknowledgment: "This [Composting Activity is] or [material is based upon a composting project] supported by the City and County of Denver under an agreement with the City's Department of Environmental Health (Denver Contract Control Number 201204116).

Disclaimer: "This report was prepared as an account of Composting Activity supported by an agency of the City and County of Denver. Neither the City government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the City government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the City government or any agency thereof."

17. Compliance with Laws.

- 17.1. WMC shall perform or cause to be performed all actions under this Agreement in full compliance 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.
- 17.2. WMC represents and warrants that it has or will obtain all necessary permits, licenses and other forms of documentation, and its personnel have received or will receive all necessary training including, but not limited to, health and safety training, required to perform services hereunder and, upon request of City, WMC shall furnish copies and/or evidence thereof to City.

18. Taxes, Charges, Penalties and Liens.

- 18.1. The City is not liable for the payment of taxes, late charges or penalties of any nature. WMC shall promptly pay when due, all taxes, bills, debts and obligations it incurs performing the Composting Activities.
- 18.2. WMC shall not allow any lien, mortgage, judgment or execution to be filed against City property.

19. Subcontracting and Assignment.

- 19.1. Subcontracting. WMC may subcontract all or any part of this Agreement without the advance written approval of City. Any portion(s) of the Composting Activities that WMC does not perform with its own forces shall be performed under subcontract(s) between WMC and such subcontractor(s). WMC shall require all subcontractors to comply with and abide by the terms of this Agreement as well as the Landfill Agreement. The employment of any subcontractors shall not diminish WMC's responsibilities under this Agreement or the Landfill Agreement. Without limiting the generality of the foregoing, WMC shall be responsible for all acts, omissions, materials and workmanship of any subcontractors, and shall cause all subcontractors to comply with the generally accepted standards of care ordinarily exercised by members of their professions. WMC shall have the right, at its sole discretion and with or without cause, to terminate any subcontractor retained by WMC.
- 19.2. Assignment. WMC shall not voluntarily or involuntarily assign any of its rights or obligations under this Agreement without obtaining the prior written consent of the Manager of the Department of Environmental Health. Any assignment without such consent will be ineffective and void, and shall be cause for termination of this Agreement by the City. The Manager has sole and absolute discretion whether to consent to any assignment, or to terminate the Agreement because of unauthorized assignment. In the event of any unauthorized assignment: (i) WMC shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any assign.

20. Notice.

- 20.1. 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 WMC	Waste Management of Colorado, Inc. 222 S. Mill Avenue, Suite 333 Tempe, AZ 85281 Attention: Director of Disposal Operations
With copy to:	Waste Management of Colorado, Inc. 3500 South Gun Club Road Aurora, CO 80018 Attention: Christopher Gibbs, District Manager
If to City:	Manager of Environmental Health 200 W. 14th Avenue, Dept. 310 Denver, Colorado 80204
With a copy to:	Denver City Attorney's Office 1437 Bannock St., Room 353 Denver, Colorado 80202

21. No Discrimination in Employment.

- 21.1. In connection with the performance of work under the Agreement, WMC 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. WMC shall insert the foregoing provision in all subcontracts.

22. Use, Possession or Sale of Alcohol or Drugs.

- 22.1. WMC 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.

23. Examination of Records.

- 23.1. WMC shall keep within the Denver metropolitan area true and complete records and accounts of all waste receipts and gross and net revenues related to WMC'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 under this Agreement which statement shall be certified by an authorized representative of WMC to be correct. WMC 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 WMC's operations under this Agreement. WMC agrees that it will keep and preserve for at least three (3) years after conclusion of this Agreement all documentation supporting the quarterly reports required by section 7, including 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 WMC's operations under this Agreement.
- 23.2. Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access and the right to examine any pertinent books, documents, papers and records of WMC, involving transactions related to the Agreement until three (3) years after conclusion of this Agreement. WMC, upon request, shall make all such documents available for local examination. If the City shall have an audit made for any year and the revenues subject to royalties under this Agreement shown by WMC's statement for such year should be found to be understated by more than one percent (1%), WMC shall pay to City the cost of City's internal audit. City's right to have such an audit made with respect to any year, and WMC's obligation to retain the above records, shall expire three (3) years after WMC's payment for any period has been delivered to City and liability of WMC to City for any royalty shall expire three (3) years after WMC's payment for any period has been delivered to City.
- 23.3. WMC agrees that City's Auditor and his or her authorized representatives may inspect any sales tax return or report, and accompanying schedules and data, which WMC may file with Arapahoe County or the State of Colorado with respect to the Composting Activities; 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.

24. No Employment of Illegal Aliens to Perform Work under the Agreement.

- 24.1. 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").

24.2. WMC certifies that:

- 24.2.1. 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.
- 24.2.2. 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.

24.3. WMC also agrees and represents that:

- 24.3.1. It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
- 24.3.2. It shall not enter into a contract with a subcontractor that fails to certify to WMC that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
- 24.3.3. 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.
- 24.3.4. 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 WMC 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.
- 24.3.5. 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. WMC 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.
- 24.3.6. 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.

24.4. WMC is liable for any violations as provided in the Certification Ordinance. If WMC 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, WMC shall be liable for actual 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 WMC from submitting bids or proposals for future contracts with the City.

25. Inurement.

25.1. 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.

26. No Third Party Beneficiary.

26.1. 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. Any person or entity other than the City or WMC receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.

27. No Authority to Bind City to Contracts.

27.1. WMC 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.

28. Conflict of Interest.

28.1. No employee of the City shall have any personal or beneficial interest in the services or property described in the Agreement. WMC 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.

28.2. WMC shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. WMC 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 WMC by placing WMC's own interests, or the interests of any party with whom WMC 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 WMC written notice describing the conflict.

29. Disputes.

29.1. All disputes between the City and WMC arising out of or regarding the Agreement will be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-106(b)-(f). For the purposes of that administrative procedure, the City official rendering a final determination shall be the Manager/City Attorney as defined in this Agreement.

30. Entire Agreement; Amendment.

30.1. 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 writing signed by all the Parties.

31. Order of Precedence.

31.1. This Agreement is comprised of Articles 1 through 42 and each of the following, which are incorporated by reference herein:

- Exhibit A Legal Description and Compost Site Drawing
- Exhibit B Compostable Material
- Exhibit C Certificate of Insurance

31.2. In the event of any conflicts between the language of the Agreement and the exhibits, the language of the Agreement controls.

31.3. In the event of any conflict between this Agreement and the Landfill Agreement, this Agreement shall control solely with respect to the subject matter contained herein.

32. Construction.

32.1. 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.

33. Headings.

33.1. 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.

34. Governing Law; Venue.

34.1. This Agreement, and all amendments or supplements thereto, shall be governed by and construed in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Denver Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into the Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Any litigation arising out of this Agreement shall be brought in the City and County of Denver, Colorado.

35. When Rights and Remedies Not Waived.

35.1. In no event will any acceptance of a Composting Royalty payment or other action by the City constitute or be construed to be a waiver by the City of any breach of covenant or default that may then exist on the part of WMC. No payment, other action, or inaction by the City when any breach or default exists will impair or prejudice any right or remedy available to it with respect to any breach or default. No assent, expressed or implied, to any breach of any term of the Agreement constitutes a waiver of any other breach.

36. Legal Authority.

36.1. WMC 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 WMC represents and warrants that he has been fully authorized by WMC to execute the Agreement on behalf of WMC and to validly and legally bind WMC to all the terms, performances and provisions of the Agreement. The City shall have 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 WMC or the person signing the Agreement to enter into the Agreement.

37. No Construction Against Drafting Party.

37.1. 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.

38. Severability.

38.1. 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.

39. Survival of Certain Provisions.

39.1. 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, WMC'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.

40. Electronic Signatures and Electronic Records.

40.1. WMC 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. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

41. City Execution of Agreement.

41.1. 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.

42. Counterparts.

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

[Signatures follow on next pages.]

Contract Control Number:

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:

By _____

By _____

By _____



Contract Control Number: ENVHL-201524286-00

Contractor Name: WASTE MANAGEMENT OF COLORADO, INC.

By: Ray Gierwinski

Name: Ray Gierwinski
(please print)

Title: Vice President and Assistant Secretary
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



Exhibit A

Denver Arapahoe Disposal Site

Composting Facility



Legend

- Approximate Outline of Denver Arapahoe Disposal Site
- PLSS Section Lines
- Current Composting Area
- Current Composting Facility
- Approximate Outline of Site Features
- Denver Arapahoe Chemical Waste Processing Facility (DACWF)
- Stormwater Detention
- Wetlands
- Streams
- 10 Foot Contours

Data Sources: PLSS Grid System, Contours, Arapahoe County, 2011. Streets, Streams, City and County of Denver, 2013



0 0.125 0.25 0.5 MI



Map created January 2013
City & County of Denver
Dept of Environmental Health

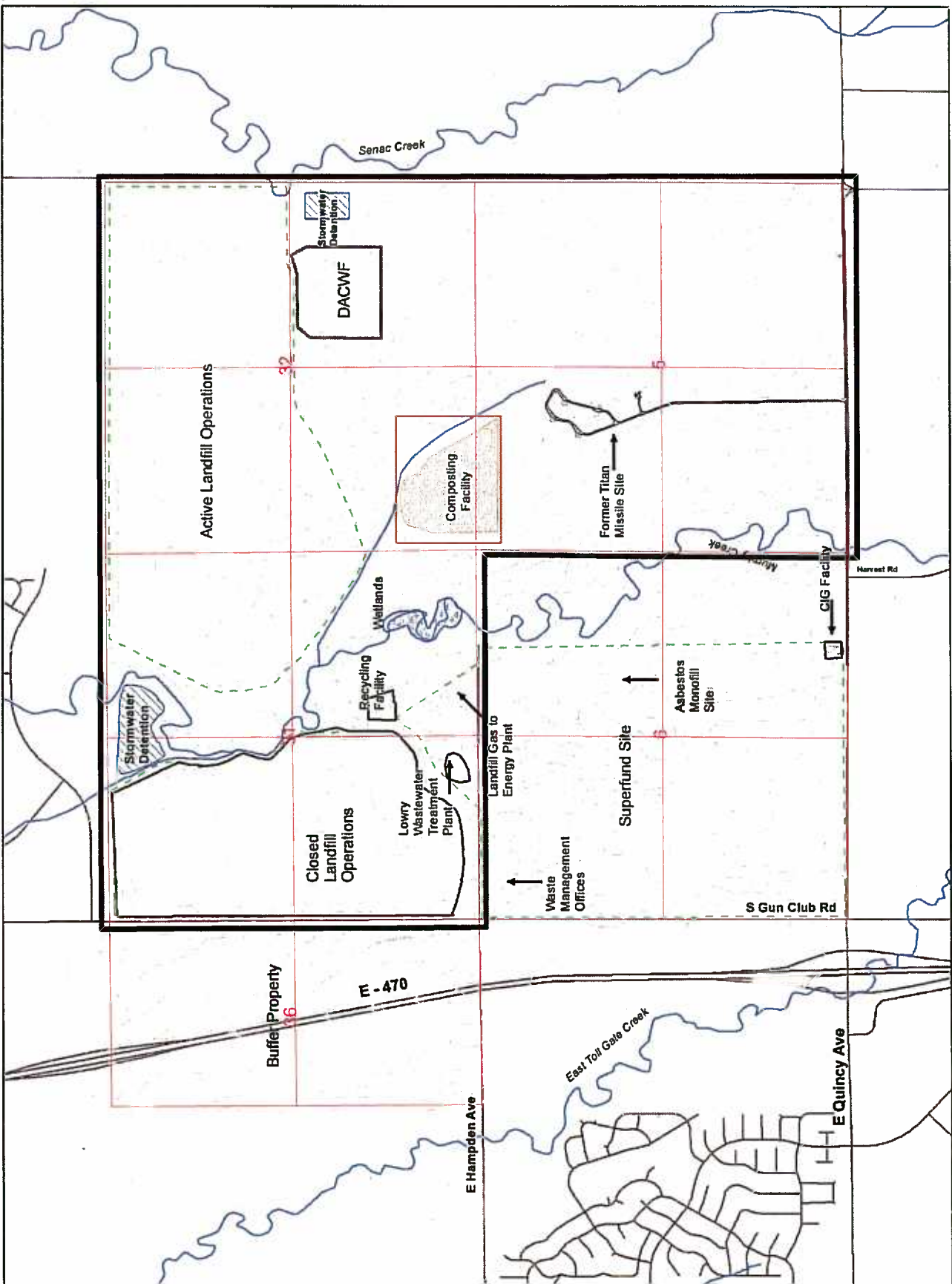


Exhibit A-1
Contract Control Number ENVHL-201204116-00

The portion of the Landfill Agreement "site" known as the Denver Arapahoe Disposal Site to be used as the Composting Area is described as follows:

A tract of land situated in Arapahoe County, Colorado:

THE SOUTH ONE-HALF OF THE SOUTHWEST ONE-QUARTER OF SECTION 32, TOWNSHIP 4 SOUTH, RANGE 65 WEST OF THE 6TH PRINCIPAL MERIDIAN;

And

THE NORTH ONE-HALF OF THE NORTHWEST ONE-QUARTER OF SECTION 5, TOWNSHIP 5 SOUTH, RANGE 65 WEST OF THE 6TH PRINCIPAL MERIDIAN.

The Landfill Agreement "site" and the Composting Area are depicted on the next two pages.

Exhibit B Compostable Materials
Contract Control No. 201524286

Compostable Materials that may be processed per this Agreement include but are not limited to:

- Agricultural crop residues
- Manure
- Biosolids
- Food waste
- Water treatment plant residues no greater than 40 pCi/g gross alpha radiation
- Untreated wood wastes
- Source-separated yard, paper, and green wastes
- Filtered waters from utility installations – jetting
- Water from hydrostatic testing of new tanks and piping
- Development water from installation of potable water wells
- Food waste liquids, such as milk, soda, beer, water, iced tea, fruit drinks, wine, distilled spirits, malted beverages, etc. WM will provide notice to the Manager of any additional types of food liquids prior to their acceptance for composting.
- Water from high pressure thawing of frozen water lines
- Water from high pressure clearing of electrical conduit in new utility installations
- After seven (7) days' notice to the City, other non-hazardous liquids and wastes as allowed per Section 3.0 of the May 2011 Waste Management, Waste Identification Program, Denver Arapahoe Disposal Site.