

**LEASE AND AGREEMENT FOR  
RECYCLING AND PROCESSING OF CONCRETE AND ASPHALT**

**THIS LEASE and AGREEMENT** (“Lease and Agreement”) is entered into by the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “Lessor” or “City”), **WASTE MANAGEMENT OF COLORADO, INC.** (“Waste Management”), a Colorado Corporation with its principal place of business at 5500 S. Quebec Street, Suite 250, Greenwood Village, CO 80111, and **ASPHALT SPECIALTIES CO., INC.**, a Colorado Corporation with its principal place of business at 10100 Dallas Street Henderson, CO 80640 (“Tenant”) (collectively “the Parties”).

**W I T N E S S E T H:**

**WHEREAS**, the City is the owner of certain property located at 3500 South Gun Club Road, Aurora, CO 80018, in Arapahoe County, Colorado (the “Property”) in which the Premises (as described herein) is located; and

**WHEREAS**, the City is desirous of leasing the Premises to Tenant for recycling and processing of concrete and asphalt, including concrete and asphalt batching operations as described herein; and

**WHEREAS**, Waste Management is the operator of a solid waste landfill on the Property pursuant to a separate agreement with the City; and

**WHEREAS**, Waste Management’s agreement with the City requires the approval of Waste Management for uses of the Property proposed by the City that could interfere with current or future landfill operations;

**NOW, THEREFORE**, for and in consideration of the mutual covenants and agreements herein contained, the City, Waste Management, and Tenant agree as follows:

**1. Leased Premises.** Subject to the terms of this Lease and Agreement, the City agrees to lease, demise, and let unto Tenant, and Tenant does hereby lease from the City, those certain premises (“Premises”) located in Arapahoe County, Colorado, consisting of approximately twenty-five (25) acres, plus or minus, in size and located approximately one-half (0.5) mile east of Gun Club Road just south of the Yale Avenue section line, all within SE ¼ of Section 31, Township 4, Range 65 West of the 6<sup>th</sup> Principal Meridian, and as further depicted on **Exhibit A**, attached hereto and incorporated herein by this reference. Waste Management gives its consent to the City to lease the Premises to Tenant.

**2. Term.** The Lease term will commence on August 1, 2016 and terminate July 31, 2023 (“Initial Term”), unless earlier terminated as provided below. The Lease and Agreement may be extended beyond the Initial Term upon mutual agreement of the Parties by written amendment hereto.

**3. Rent and Fee Payment.** Tenant shall pay “Rent” in two components: “Base Rent” and “Production Site Rental”. Base Rent shall be **EIGHT THOUSAND DOLLARS**

(\$ 8,000.00) per month paid in advance. Base Rent shall escalate by the Consumer Price Index on each anniversary of the effective date of this Lease and Agreement. Volumes for calculation of Production Site Rental shall be reported monthly, and Production Site Rental paid quarterly, in arrears, based on the quantity of various products sold on, or originating from, the Premises during the quarter as follows:

Recycled Aggregates: (annual volumes)	\$0.05/ton (0 – 50,000 tons)
	\$0.10/ton (50,000 – 100,000 tons)
	\$0.15/ton (100,000 – 200,000 tons)
	\$0.20/ton (> 200,000 tons)

Bituminous Pavement: (annual volumes)	\$0.30/ton (0 – 50,000 tons)
	\$0.50/ton (50,000 – 100,000 tons)
	\$0.65/ton (100,000 – 200,000 tons)
	\$0.75/ton (> 200,000 tons)

Concrete Redi-Mix: (annual volumes)	\$0.20/cubic yard (0 – 20,000 cubic yards)
	\$0.40/cubic yard (20,000 – 50,000 cubic yards)
	\$0.60/cubic yard (50,000 – 100,000 cubic yards)
	\$0.70/cubic yard (> 100,000 cubic yards)

Existing Stockpile Royalties:

- \$20,000.00 (lump sum) for 52,000 cubic yards of uncrushed concrete/asphalt shall be paid at the same time as the first Monthly Base Rent payment

The following Royalties shall be paid in the month following the material sales (until the volume is depleted):

- 50% of sale price for 6,000 cubic yards of crushed roadbase
- 50% of sale price for 12,000 cubic yards of crushed rock (4")
- 50% of sale price for 14,000 cubic yards of crushed rock (1.5")

The Monthly Rent and Production Site Rental paid on each unit sold shall escalate annually on the anniversary of the effective date of this Lease and Agreement in an amount equal to the percentage increase during the preceding twelve (12) months in the Denver Metro Area Producer Price Index for sand, gravel and aggregates as developed by the United States Department of Labor (presently available at: [http://data.bls.gov/timeseries/wps1321?output\\_view=pct\\_3mths](http://data.bls.gov/timeseries/wps1321?output_view=pct_3mths)). Tenant shall pay the Base Rent and Production Site Rental to the City and Waste Management by a check due no later than the tenth day of the month in which the Rent is due. The Existing Stockpile Royalty, Base Rent and Production Site Rental shall be apportioned to the City and Waste Management as follows: Tenant shall pay as rent to Denver fifty percent (50%) and as a

user fee to Waste Management fifty percent (50%) of the combined Existing Stockpile Royalty, Base Rent and Production site Rental. All past due installments shall bear interest at a rate of 12% per annum compounded annually until paid.

#### **4. Use of Premises.**

(a) Tenant has the right to use the Premises solely for the following purposes: site preparation; any environmental assessment activities that Tenant may choose to conduct in its sole discretion; storage and installation of equipment and structures related to the processing and recycling of concrete and asphalt; installation of concrete and/or asphalt batch plants; installation of utility hookups; obtaining necessary permits and approvals for recycling operations authorized herein; and recycling operations including, without limitation, stockpiling of recycled and virgin aggregate materials for on-site concrete and asphalt batching operations and for sale of the aggregate materials to third parties, concrete and asphalt batching operations, and customer service, marketing, sales, and administrative activities (“Recycling Operations”). Prior to initiating on-site operations, Tenant shall submit an operations plan describing the anticipated volumes of recycled and virgin aggregate materials to be processed and stockpiled on the Property to the City and Waste Management for approval. Tenant shall be prohibited from stockpiling more than 50,000 cubic yards of unprocessed material, or the equivalent of Tenant’s average quarterly sales of material from the Property, whichever is greater, without the City and Waste Management’s prior written approval. Notwithstanding the foregoing, Tenant shall have one year to remove the stockpiled materials existing on the Premises at the start of the Term. Tenant shall have the exclusive right to conduct the Recycling Operations described in this paragraph, and as approved by the City and Waste Management, on the Property during the term of this Lease and Agreement, as long as Tenant is not in breach or default hereunder.

**Exhibit B (phasing map)** illustrates the Phase areas in which ASCI will operate for the first two years and then for the remainder of the Lease and Agreement. Prior to ASCI’s occupation of Phase 14, WMC will relocate the roll-off storage area. ASCI shall have the option of purchasing the WMC-owned pile of uncrushed asphalt presently located within Phase 14, approximately 20,000 cubic yards in total, from WMC. If ASCI does not exercise this option to purchase, WMC will make reasonable efforts to remove or deplete the pile of uncrushed asphalt. If, despite reasonable efforts, WMC is unable to remove the pile of uncrushed asphalt, ASCI may elect to leave the pile of uncrushed asphalt in place or move it at ASCI’s expense. Additionally, WMC will provide a grading plan for ASCI to implement so that ASCI’s site improvements will not interfere with future landfill construction and operations. Subject to WMC and the City’s approval, ASCI may commence grading of portions of Phases 14 and 15 for the recycling and plant placement prior to ASCI’s occupation of these phases. Finally, ASCI will relocate or bury the existing 4-inch HDPE above ground water line that runs from the north water well at Murphy Creek to the compost area to a mutually agreed upon location that does not interfere with ASCI or WMC operations. ASCI will also relocate the valves located along the water line as necessary to retain the drainage function afforded by each valve. If buried, ASCI will properly embed the line at a continuous grade in order to retain drainage and extend valve access/drainage as required.

(b) Tenant shall use the Premises in a careful, safe, and proper manner, in accordance with industry standards; and shall not use or permit the Premises to be used in any manner that interferes with the operations of the Denver-Arapahoe Disposal Facility or for any purpose in violation of any federal, state, or local law, ordinance, or regulation, order, or directive of any governmental entity. Tenant shall not commit or suffer to be committed any waste or damage upon the Premises or any nuisance to be created or maintained thereon. Without limiting the generality of the foregoing, Tenant shall be responsible for all releases from its facilities to the environment as provided in Section 12 and shall comply with any and all permits or other applicable federal, state and local requirements. Subject to this Section 4, Tenant shall also keep the Premises free and clear from trash, waste, and debris and shall separately contract with Waste Management to dispose of waste materials generated on the Premises. The City and Waste Management acknowledge that Recycling Operations authorized under this Lease and Agreement require maintenance of stockpiles of concrete and asphalt debris. Concrete and asphalt debris stockpiled as reasonably required for Recycling Operations and managed so as to avoid nuisance conditions shall not be considered “trash, waste, or debris” for purposes of this Section.

**5. Restricted Access.** Access to the Property is from a gate located in the fence on the east side of Gun Club Road at the Hampden Avenue section line or another location requested by Tenant and agreed to by the City and Waste Management. Tenant may control access by means of a lock in series with any lock provided by Waste Management. Tenant may install signage at the gate providing notice of restricted access and identifying Tenant and Tenant’s operations on the Premises.

**6. Repairs.**

(a) **By City and Waste Management:** Neither the City nor Waste Management shall be required to make any improvements to or repairs of any kind or character on the Premises during the term of this Lease and Agreement.

(b) **By Tenant:** Tenant shall be entitled to make the alterations in and additions to the Premises described in Section 4 and shall be entitled to make any necessary repairs to such alterations and additions during the term of this Lease and Agreement. Tenant shall make no other alterations in, additions to, or repairs to the Premises without first obtaining the written consent of the City and Waste Management, which consent shall not be unreasonably withheld. Tenant shall indemnify, defend, and hold the City and Waste Management harmless against any liability, loss, damage, costs or expenses, including attorneys fees, on account of any claims of any nature whatsoever, including but not limited to, claims of liens by laborers, material suppliers, or others, arising from work performed for, or materials or supplies furnished to Tenant or persons claiming under Tenant.

**7. Entry by the City and Waste Management.** Tenant shall peacefully have, hold, and enjoy the Premises, subject to the terms of the Lease and Agreement, and, provided that Tenant observes the covenants and agreements herein contained, shall not be disturbed or interfered with by the City or Waste Management or any person claiming by, through, or under the City or Waste Management, except as expressly provided in this Lease and Agreement. Tenant shall

permit the City and Waste Management to enter into and upon the Premises at all reasonable hours to inspect the same and make any repairs deemed necessary by them, which repair costs Tenant will be responsible for, and Tenant shall not be entitled to any abatement or reduction of rent by reason thereof. The City and Waste Management shall notify Tenant in advance of such entries, coordinate such entries with Tenant's work, and take reasonable precautions to avoid disturbance or interference with Tenant's approved operations under this Lease and Agreement. Except in case of emergency, the City and Waste Management shall not enter to make repairs without providing written notice to Tenant specifying such repairs which shall provide a reasonable opportunity of not less than ten (10) business days for Tenant to make such repairs. Further, nothing in this Section 7 shall be construed to require Tenant to relocate stockpiled materials, plants, or recycling equipment, unless reasonable notice is provided, or as required to comply with any applicable law, regulation, or court order. In order to accommodate anticipated landfilling needs, Tenant hereby agrees to remove all structures, equipment, processed and unprocessed material, waste, debris, and other effects within the timeframes indicated on **Exhibit B (phasing map)**. ASCI will vacate the individual parcels one year prior to the vacate date identified on Exhibit B.

**8. Care and Surrender of the Premises.** On or before the expiration of this Lease and Agreement, Tenant shall remove of all of Tenant's structures, equipment, processed and unprocessed material, waste, debris, and other effects. All structures, equipment, and other effects not so removed shall conclusively be deemed to have been abandoned and may be appropriated, sold, stored, destroyed, or otherwise disposed of by the City and Waste Management without notice to Tenant or any other person, and without obligation to account therefor, and Tenant shall pay City and Waste Management all expenses incurred in connection with such property. Tenant warrants that the Premises shall be free from any waste materials, or Hazardous Substances (as defined in Section 12) contributed by Tenant's operations and that no materials or objects will be buried on the property without the express written approval of the City and Waste Management. Tenant's obligation to observe or perform this covenant shall survive the termination of this Lease and Agreement.

**9. Service Charges.** Tenant shall pay for all water, gas, heat, light, power, janitorial, telephone service, and all other services requested or used by Tenant at the Premises, including at recycle/plant operations facility. Rates for water and power and any other mutually shared utilities or services will be covered in a separate agreement between the Tenant and Waste Management. Tenant will agree to reasonable method based on usage for determining rate sharing for water and power as proposed and administered by Waste Management.

**10. Indemnity.**

**(a) By Tenant:** Tenant shall defend, indemnify, and save harmless the City and its officers, agents and employees from any and all claims, demands, suits, actions or proceedings of any kind or nature whatsoever, including without limitation, Workmen's Compensation and environmental damages claims, of or by anyone whomsoever, in any way resulting from or arising out of this Lease and Agreement; provided, however, that Tenant need not defend, indemnify or save harmless the City and its officers, agents or employees from claims, demands, suits, actions or proceedings of any kind or nature whatsoever arising from the grossly negligent,

intentionally tortious, or unlawful acts or omissions of the City's own officers, agents or employees, or, except as provided in Section 13, arising from Existing Contamination at, on, under, or near the Premises.

Tenant shall defend, indemnify, and save harmless Waste Management and its parents, subsidiaries, affiliates, directors, officers, agents, and employees from any and all claims, demands, suits, actions or proceedings of any kind or nature whatsoever, including without limitation, Workmen's Compensation and environmental damages claims, of or by anyone whomsoever, in any way resulting from or arising out of the acts or omissions of Tenant or Tenant's parents, subsidiaries, affiliates, directors, officers, agents, contractors, licensees, or employees under this Lease and Agreement; provided, however, that Tenant need not defend, indemnify or save harmless Waste Management or Waste Management's parents, subsidiaries, affiliates, directors, officers, agents, or employees from such claims, demands, suits, actions or proceedings of any kind or nature whatsoever arising from the grossly negligent, intentionally tortious, or unlawful acts or omissions of Waste Management or Waste Management's parents, subsidiaries, affiliates, directors, officers, agents, contractors, licensees, or employees, or, except as provided in Section 13, arising from Existing Contamination at, on, under, or near the Premises.

**(b) By Waste Management:** Waste Management shall defend, indemnify, save harmless, and covenant not to sue Tenant, and its parents, subsidiaries, affiliates, directors, officers, agents, employees, contractors, licensees and invitees for any and all claims, demands, suits, actions or proceedings of any kind or nature whatsoever, including, without limitation, claims related to Hazardous Substances or Existing Contamination, of or by anyone in any way resulting from or arising out of the acts or omissions of Waste Management or Waste Management's parents, subsidiaries, affiliates, directors, officers, agents, contractors, licensees, employees, or invitees at, on, under, or near the Premises.

**(c)** These indemnity obligations shall survive the expiration or earlier termination of this Lease and Agreement.

**11. Loss or Damage.** The City shall not be liable or responsible to Tenant for any loss or damage to any property or person, at no fault of the City, occasioned by theft, fire, Act of God, public enemy, injunction at no fault of the City or by the USEPA, riot, strike, insurrection, war, court order, or, except as provided in Section 15, requisition or order of any governmental entity other than the City.

Waste Management shall not be liable or responsible to Tenant for any loss or damage to any property or person, at no fault of Waste Management, occasioned by theft, fire, Act of God, public enemy, injunction at no fault of Waste Management or by the USEPA, riot, strike, insurrection, war, court order, requisition or order of any governmental entity.

Tenant shall not be liable or responsible to the City or Waste Management for any loss or damage to any property or person, at no fault of Tenant, occasioned by theft, fire, Act of God, public enemy, injunction at no fault of Tenant, riot, strike, insurrection, war, court order,

requisition or order of any governmental entity. In the event of a fire or other casualty in or to the Premises, Tenant shall immediately give notice thereof to the City.

## **12. Hazardous Substances.**

The City and Waste Management acknowledge that the use and storage of certain materials that may fall under the definition of Hazardous Substances herein, notably petroleum, are necessary to the Recycling Operations and are authorized pursuant to this Lease and Agreement. However, prior to the use and/or storage of any Hazardous Substances on the Property, Tenant shall submit a spill prevention, control, and countermeasure plan to the City and Waste Management for approval. All Hazardous Substances utilized by the Tenant in its operations shall be stored in appropriate containment vessels and include secondary containment as required by applicable regulations. Tenant shall not cause or permit any Hazardous Substance to be used, stored, generated, or disposed of on or in the Premises by Tenant, Tenant's officers, agents, employees, contractors, or invitees, except as otherwise specifically approved by the City and Waste Management, in writing, in advance. In no event shall such materials be disposed of on, in, or under the Premises. If Tenant causes or permits Hazardous Substances to be used, stored, generated, or disposed of on or in the Premises and such Hazardous Substances are released on or from the Premises, or if the Premises become contaminated in any manner due to the acts or omissions of Tenant, Tenant shall indemnify and hold harmless the City and Waste Management and their parents, subsidiaries, affiliates, directors, officers, agents, and employees from any and all claims, damages, fines, judgments, penalties, costs, liabilities, or losses (including, without limitation, a decrease in value of the premises, damages caused by adverse impact on marketing of the space, and any and all reasonable sums paid for settlement of claims, and attorneys' fees, consultant, and expert fees arising from the defense of such claims) arising during or after the term of the Lease and Agreement as a result of such acts or omissions by Tenant. This indemnification includes, without limitation, any and all costs incurred because of any investigation of the site or any cleanup, removal, or restoration mandated by a federal, State, or local agency or political subdivision with jurisdiction over the Premises. Without limitation of the foregoing, if Tenant causes or permits any Hazardous Substance to be used, stored, generated, or disposed of on or in the Premises by Tenant, or Tenant's officers, agents, employees, contractors, or invitees that results in a release of such Hazardous Substance onto the Premises, Tenant shall immediately implement containment and control measures and immediately notify the City and Waste Management and request the City's and Waste Management's written approval to take any and all necessary actions to return the Premises to the condition existing prior to the presence of any such Hazardous Substance on the Premises. Upon receiving written approval from the City and Waste Management, Tenant shall promptly, at its sole expense, take such remedial action. As used herein, "Hazardous Substance" means any substance that is noxious, toxic, ignitable, reactive, or corrosive and that is regulated by any local government with jurisdiction over the Premises, the State of Colorado, or the United States Government and includes, but is not limited to, (i) any and all material or substances that are defined as "hazardous waste", "extremely hazardous waste", or a "hazardous substance"

pursuant to State, federal, or local law; or (ii) asbestos, polychlorinated biphenyls (“PCBs”), and petroleum.

This indemnity shall survive the expiration or earlier termination of this Lease and Agreement.

**13. Existing Environmental Conditions.** Tenant acknowledges that solid waste (as defined by applicable State and federal statute) may be present at or near the Premises. Tenant shall take due care to avoid exposure of Tenant’s employees and other persons to waste materials and any associated hazards and to avoid exacerbating any adverse effects that such materials may have on the environment, other property, and other persons.

The City and Waste Management shall cooperate to identify and make available to Tenant environmental information relevant to the Premises and has provided to Tenant reports entitled: Lowry Brine Evaporation Ponds Field Sampling Program (September 1991), Revised Closure Plan, Lowry Brine Evaporation Ponds (March 1991), and Lowry Brine Evaporation Ponds Closure Report (August 1992). Based on such information, and to the best of their knowledge, the City and Waste Management each represent that no further remedial action is currently required on the Premises to address risk to human health and the environment posed by Existing Contamination (as defined herein), including, but not limited to, contamination related to former brine ponds and sludge farming.

In the event that Tenant encounters any Existing Contamination in performing the activities authorized under this Lease and Agreement that is visible, odorous, or otherwise recognizable without the use of laboratory or mechanical analysis, or identifies Existing Contamination during any environmental assessment of the Premises that Tenant may choose to conduct in its sole discretion, Tenant shall immediately notify the City and Waste Management and shall cease any activities that reasonably could be expected to disturb such Existing Contamination. If such Existing Contamination renders the Premises entirely or partially unsuitable for the uses contemplated under this Lease and Agreement, as determined in Tenant’s sole discretion, Tenant may terminate the Lease and Agreement pursuant to Section 17 herein.

In no event, shall Tenant be obligated to indemnify or hold harmless the City or Waste Management or their parents, subsidiaries, affiliates, directors, officers, agents, or employees for any claims, damages, fines, judgments, penalties, costs, liabilities, or losses arising from Existing Contamination, except for that portion of such claims, damages, fines, judgments, penalties, costs, liabilities, or losses arising from Existing Contamination that is attributable to negligent or intentionally tortious acts or omissions of Tenant or Tenant’s parents, subsidiaries, affiliates, directors, officers, agents, employees, contractors, or invitees that have exacerbated such contamination. Further, the City and Waste Management covenant not to sue Tenant or Tenant’s parents, subsidiaries, affiliates, directors, officers, agents, employees, contractors, or invitees for any claims, damages, fines, judgments, penalties, costs, liabilities, or losses arising from Existing Contamination unless caused or exacerbated by the negligent or intentionally tortious acts or omissions of Tenant or Tenant’s parents, subsidiaries, affiliates, directors, officers, agents, employees, contractors, or invitees. In the event Tenant encounters Existing Contamination while performing authorized Recycling Operations, as long as Tenant notifies the City and Waste

Management and ceases operations as required under this Section 13, Tenant shall not be deemed to have caused or exacerbated such Existing Contamination.

Tenant shall assert no claims against the City or Waste Management, or their parents, subsidiaries, affiliates, directors, officers, agents, or employees arising from the Existing Contamination unless such contamination has been exacerbated by the negligent or intentionally tortious acts or omissions of the City or Waste Management or their parents, subsidiaries, affiliates, directors, officers, agents, employees, licensees, contractors or invitees on or after April 11, 2000. Notwithstanding the foregoing, Tenant shall not be precluded from asserting claims for contribution related to Existing Contamination against the City and/or Waste Management under State or federal law, including but not limited to, Section 113 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9613, or claims for cost recovery related to Existing Contamination under Section 107 of CERCLA, 42 U.S.C. § 9607; however, such claims may be asserted only for response costs actually incurred by, or sought from, Tenant because of Existing Contamination pursuant to a governmental or judicial order or directive to clean up or mitigate existing contamination. Tenant shall make no claims for costs associated with the environmental assessment authorized in Section 4 herein.

For purposes of this Lease and Agreement, "Existing Contamination" shall mean any Hazardous Substance present at, in, on, or under the Premises, or adjacent property owned or operated by the City or Waste Management, on or before the date of execution of this Lease and Agreement by the City. The covenants set forth in this section shall survive the expiration or earlier termination of this Lease and Agreement.

**14. Acceptance of Premises; Disclaimer.** TENANT HAS ACCEPTED THE PREMISES IN ITS CURRENT 'AS-IS', "WHERE-IS" CONDITION AND WITH ALL FAULTS AND WITHOUT ANY WARRANTY, REPRESENTATION, EXPRESSED OR IMPLIED CONCERNING THE CONDITION OR CHARACTERISTICS OF THE PREMISES, INCLUDING ANY EXISTING PROCESSED AND/OR UNPROCESSED MATERIALS. WITHOUT LIMITING THE FOREGOING, THE CITY AND WASTE MANAGEMENT MAKE NO REPRESENTATIONS OR WARRANTIES CONCERNING THE CONDITION OF THE PREMISES, THE FITNESS OF THE PREMISES FOR THE OPERATION OF TENANT'S DADS ASPHALT/CONCRETE RECYCLING BUSINESS, THE FITNESS OF THE PREMISES FOR A PARTICULAR PURPOSE, OR THE FITNESS OF THE PREMISES FOR ANY PURPOSE.

**15. Condemnation.** A "Taking" shall mean the taking of all or any portion of the Premises as a result of the exercise of the power of eminent domain or condemnation for public or quasi-public use or, a bona fide threat of any such taking, or the sale or conveyance of all or part of the Premises under the threat of condemnation. A "Substantial Taking" shall mean a Taking which would interfere in a material manner with any use or operation that Tenant is conducting or has proposed conducting on the Premises at the time of such Taking. In the event of a Taking of all or any portion of the Premises during the term of the Lease and Agreement, the City shall immediately provide written notice to Tenant. If the Taking is not a Substantial Taking, as determined in good faith by Tenant, the Lease and Agreement shall terminate on the

date that the Taking is consummated only as to that portion of the Premises taken and the Base Rent for the remaining portion of the Premises shall be abated in the same proportion as the ground area of the Premises taken to the ground area of the Premises prior to such Taking. The Lease and Agreement shall be deemed to terminate on the date of a Substantial Taking. In the event of a Taking, Tenant shall be entitled to that portion of the award, compensation, damages, or consideration paid or payable as a result of or in connection with such Taking to which Tenant is or would be entitled under State statute, regulation, and/or common law if such Taking is or were a result of the exercise of the power of eminent domain.

**16. Assignment or Sublease by Tenant.** Tenant may not sublease the Premises without the express prior written approval from the City, which consent may be withheld in the City's or Waste Management's discretion. Any sublease would be subject to all of the same requirements as the primary lease, and it is ASCI's responsibility to ensure that its sublessee complies.

**17. Mechanic's Liens.** Tenant shall not suffer or permit any mechanic's lien, or other lien, to be filed against the Premises, or any part thereof by reason of work, labor services, or materials supplied, or claimed to have been supplied to Tenant and/or its designated representatives, or anyone claiming under Tenant and/or designated representatives.

**18. Insurance.**

**(a) General Conditions:** Tenant agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Tenant 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 non-renewed 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 or non-renewal 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, Tenant 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, the City must be notified by the Tenant. Tenant shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Tenant. The Tenant 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.

**(b) Proof of Insurance:** Tenant shall provide a copy of this Agreement to its insurance agent or broker. Tenant may not commence services or work relating to the

Agreement prior to placement of coverages required under this Agreement. Tenant 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 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 Tenant's breach of this Agreement or of any of the City and Waste Management'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.

(c) **Additional Insureds**: For Commercial General Liability, Auto Liability and Professional Liability, Tenant and subcontractor's insurer(s) shall name the City and County of Denver, its elected and appointed officials, employees and volunteers and Waste Management as additional insured.

(d) **Waiver of Subrogation**: For all coverages required under this Agreement, Tenant's insurer shall waive subrogation rights against the City and Waste Management.

(e) **Subcontractors and Sub-lessees**: All subcontractors and sub-lessees (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 the Tenant. Tenant 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 sub-lessees maintain the required coverages. Tenant agrees to provide proof of insurance for all such subcontractors and sub-lessees upon request by the City.

(f) **Workers' Compensation/Employer's Liability Insurance**: Tenant 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. Tenant expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the Tenant'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 Tenant executes this Agreement.

(g) **Commercial General Liability**: Tenant shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

(h) **Business Automobile Liability**: Tenant shall maintain Business Automobile Liability, or its equivalent, with minimum 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 wastes, hazardous material, or regulated substances, Tenant 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.

(i) **Pollution Liability**: Tenant 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 and Waste Management.

(j) **Additional Provisions**:

(i) 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 outside the limits of liability;

(iii) A severability of interests, 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 and Waste Management.

(ii) For claims-made coverage:

(a) The retroactive date must be on or before the contract date.

(b) Tenant 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, the Tenant will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

**19. Remedies Upon Breach.**

(a) **By Tenant**: In the event of a breach of this Lease and Agreement by Tenant, the City or Waste Management shall provide notice to Tenant. If Tenant has not cured such breach within thirty (30) days following receipt of such notice, or such longer period agreed upon in writing by the Parties, in addition to all of the rights and remedies provided at law or in equity, the City or Waste Management (“Terminating Party”) may terminate this Lease and Agreement and shall be entitled to recover as damages a sum of money equal to the total of (i) any

reasonable damages incurred by the Terminating Party as a result of the breach ; (ii) any unpaid taxes or assessments; and (iii) any other sum of money owed by Tenant to the Terminating Party pursuant to this Lease and Agreement. If in the City's and Waste Management's reasonable judgment the Tenant has breached this Agreement and said breach has or will result in an immediate threat to human health, safety or the environment, the City and Waste Management may immediately suspend Tenant's activities at the Property and require that Tenant immediately remedy said breach. Tenant's failure to so remedy its breach will allow the City and Waste Management to immediately terminate this Lease, without further opportunity to cure.

**(b) By the City or Waste Management:** In the event of a breach of this Lease and Agreement by the City or Waste Management, Tenant shall provide notice to the City and/or Waste Management ("Breaching Party"). If the Breaching Party has not cured such breach within thirty (30) days following receipt of such notice, or such longer period agreed upon by the Parties in writing, in addition to all of the rights and remedies provided at law or in equity, Tenant shall be entitled to terminate this Lease as of the date of the breach and the rent otherwise payable by Tenant shall be apportioned to the date of termination. Any costs and expenses, including attorneys' fees and costs of relocation, incurred by Tenant as a result of such breach shall constitute damages and Tenant shall be entitled to offset such costs against any Base Rent or Production Site Rental due to the Breaching Party pursuant to this Lease and Agreement.

**(c)** The remedies provided under this Agreement are cumulative and shall in no way affect any remedy available to the Parties in law or in equity.

## **20. Termination.**

**(a) By the City:** The City may terminate this Lease and Agreement in the event that Tenant fails to cure a breach, as provided in Section 19 and as provided in this Section 20.

**(b) By Waste Management:** Waste Management may terminate this Lease and Agreement in the event that Tenant fails to cure a breach, as provided in Section 19 and as provided in this Section 20.

**(c) Surrender of the Premises Upon Termination by the City or Waste Management:** Upon termination of this Lease and Agreement by the City and/or Waste Management, Tenant shall have ninety (90) days to remove all of Tenant's structures, equipment, supplies, processed and unprocessed materials, debris, waste and other effects. All structures, equipment, supplies, processed and unprocessed materials, debris, waste and other effects not so removed shall conclusively be deemed to have been abandoned and may be appropriated, sold, stored, destroyed, or otherwise disposed of by the City and Waste Management without notice to Tenant or any other person, and without obligation to account therefor, and Tenant shall pay City and Waste Management all expenses incurred in connection with such property.

**(d) By Tenant:** The Lease and Agreement may be terminated by Tenant as provided in Section 15 or if Tenant is unable to obtain all necessary local, State, or federal permits and approvals for Recycling Operations under this Lease and Agreement.

(e) **Notice of Termination:** To terminate the Lease and Agreement, the Terminating Party shall provide written notice to the other Parties and the Lease and Agreement shall terminate five (5) days following receipt of such written notice.

**21. Financial Assurances.** Without limiting or waiving any other responsibilities or obligations of the Tenant under this Lease and Agreement, the Tenant shall provide a payment bond or irrevocable letter of credit in the amount of **FIFTY THOUSAND DOLLARS AND NO CENTS (\$50,000.00)** as well as a performance bond or other performance guarantee in the amount of **TWO HUNDRED AND FIFTY THOUSAND DOLLARS AND NO CENTS (\$250,000.00)** (collectively, the “**Surety**”) covering all of Tenant’s performance obligations of this Lease and Agreement. Bonds must be substantially in the form specified in **Exhibit D**. The form of letters of credit or other performance guarantees must be acceptable to the City Attorney and Waste Management. The Surety must not expire before termination of this Lease and Agreement. The Tenant shall deliver to the City, prior to the effective date, a fully executed Surety which shall provide effective and sufficient financial assurance for the full and faithful performance of the Tenant’s duties and obligations under this Lease and Agreement. The Surety must be issued from a surety corporation or bank authorized to do business in the State of Colorado and which is acceptable to the City. Such Surety shall be payable to the City and Waste Management upon demand for the Tenant’s failure to perform as required under this Lease and Agreement. The Surety shall remain in effect or be promptly renewed or replaced by another Surety acceptable to the City and Waste Management during the Term of the Lease and Agreement, or any extension thereof, and during a ninety (90) day period after the expiration or termination of this Lease and Agreement. Satisfactory proof of renewal or acceptable replacement must be provided to the City and Waste Management at least sixty (60) days prior to the date of expiration or termination of the Surety. The Tenant’s obligations set out in this section shall survive the termination of this Lease and Agreement.

**22. Litigation.** In the event of default by Tenant resulting in the City and/or Waste Management using the services of an attorney for the purpose of defending or enforcing any provisions of the Lease and Agreement or regaining possession of the Premises, Tenant agrees to pay the City and Waste Management reasonable attorney’s fees and expenses on demand, with delinquent payments accruing interest at the rate of twelve percent (12%) per annum.

**23. Insolvency of Tenant.** Should any of the following occur, this Lease and Agreement shall terminate and City and Waste Management shall be entitled to re-enter and regain possession of the Premises without the return of any rent paid hereunder: (a) the Tenant commences a voluntary case under title 11 of the United States Code or the corresponding provisions of any successor laws; anyone commences an involuntary case against the Company under title 11 of the United States Code or the corresponding provisions of any successor laws and either (i) the case is not dismissed by midnight at the end of the 60th day after commencement or (ii) the court before which the case is pending issues an order for relief or similar order approving the case; (b) a court of competent jurisdiction appoints, or the Tenant makes an assignment of all or substantially all of its assets to, a custodian (as that term is defined in title 11 of the United States Code or the corresponding provisions of any successor laws) for the Tenant or all or substantially all of its assets; or (c) the Tenant fails generally to pay its debts as they become due (unless those debts are subject to a good-faith dispute as to liability or

amount) or acknowledges in writing that it is unable to do so. In such case, Tenant shall have thirty (30) days to remove all of Tenant's structures, equipment and other effects. All structures, equipment, and other effects not so removed shall conclusively be deemed to have been abandoned and may be appropriated, sold, stored, destroyed, or otherwise disposed of by the City and Waste Management without notice to Tenant or any other person, and without obligation to account therefor, and Tenant shall pay City and Waste Management all expenses incurred in connection with such property.

**24. Taxes, Charges and Penalties.** Neither the City nor Waste Management are liable for the payment of taxes, late charges or penalties of any nature, except for any additional amounts that the City may be required to pay under the City's prompt payment ordinance D.R.M.C. § 20-107, *et seq.* The Tenant shall promptly pay when due, all taxes, bills, debts and obligations it incurs with respect to the Lease and Agreement and shall not allow any lien, mortgage, judgment or execution to be filed against City or Waste Management property.

**25. Inurement.** The rights and obligations of the parties to the Lease and 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 Lease and Agreement.

**26. No Third Party Beneficiary.** Enforcement of the terms of the Lease and Agreement and all rights of action relating to enforcement are strictly reserved to the parties. Nothing contained in the Lease and Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the City, Waste Management or the Tenant receiving services or benefits pursuant to the Lease and Agreement is an incidental beneficiary only.

**27. No Authority to Bind City to Contracts.** The Tenant lacks any authority to bind the City or Waste Management 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.**

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

(b) The Tenant shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Lease and Agreement. The Tenant 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 the Tenant by placing the Tenant's own interests, or the interests of any party with whom the Tenant 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 Lease and Agreement if it determines a conflict exists, after it has given the Tenant written notice describing the conflict.

**29. Notices.** All notices required by the terms of the Lease and Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to Tenant at the address first above written, and if to the City at:

Executive Director of the Department of Environmental Health or Designee  
200 West Fourteenth Street, Department 300  
Denver, Colorado 80204

With a copy of any such notice to:

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

And if to Waste Management at:

District Manager  
3500 South Gun Club Road  
Aurora, CO 80018

With a copy to:

Legal Department  
222 South Mill Avenue, Suite 333  
Tempe, AZ 85281

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

**30. Governing Law; Venue.** The Lease and Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into the Lease and 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. Venue for any legal action relating to the Lease and Agreement will be in the District Court of the State of Colorado, Second Judicial District (Denver District Court).

**31. No Discrimination in Employment.** In connection with the performance of this Lease and Agreement, the Tenant may not refuse to hire, discharge, promote or demote, or

discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender variance, marital status, or physical or mental disability. The Tenant shall insert the foregoing provision in all subcontracts.

**32. Compliance with All Laws.** Tenant shall perform or cause to be performed its obligations of this Lease and Agreement in full compliance with all applicable laws, rules, regulations and codes of the United States, the State of Colorado; and with the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver.

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

**34. No Construction against Drafting Party.** The parties and their respective counsel have had the opportunity to review the Lease and Agreement, and the Lease and Agreement will not be construed against any party merely because any provisions of the Lease and Agreement were prepared by a particular party.

**35. Order of Precedence.** In the event of any conflicts between the language of the Lease and Agreement and the exhibits, the language of the Lease and Agreement controls.

**36. Survival of Certain Provisions.** The terms of the Lease and Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Lease and Agreement survive the Lease and Agreement and will continue to be enforceable. Without limiting the generality of this provision, the Tenant's obligations to provide insurance and to indemnify the City and Waste Management 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.

**37. City Execution of Agreement.** The Lease and Agreement will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

**38. Agreement as Complete Integration-Amendments.** The Lease and Agreement is the complete integration of all understandings between the parties as to the subject matter of the Lease and Agreement. No prior, contemporaneous or subsequent addition, deletion, or other modification has any force or effect, unless embodied in the Lease and Agreement in writing. No oral representation by any officer or employee of the City or Waste Management at variance

with the terms of the Lease and Agreement or any written amendment to the Lease and Agreement will have any force or effect or bind the City or Waste Management.

**39. Use, Possession or Sale of Alcohol or Drugs.** Tenant 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.

**40. Electronic Signatures and Electronic Records.** The Parties consent to the use of electronic signatures. The Lease and Agreement, and any other documents requiring a signature under the Lease and Agreement, may be signed electronically by the Parties, in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Lease and 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 Lease and 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.

**THE BALANCE OF THIS PAGE IS INTENTIONALLY LEFT BLANK.**

**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-201627472-00

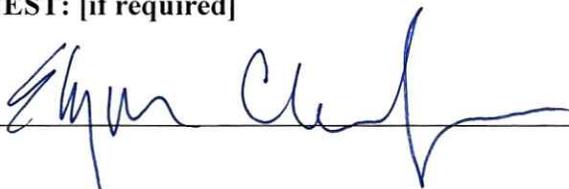
Contractor Name: ASPHALT SPECIALTIES COMPANY, INC (ASCI)

By: 

Name: DANIEL W. HUNT  
(please print)

Title: PRESIDENT  
(please print)

ATTEST: [if required]

By: 

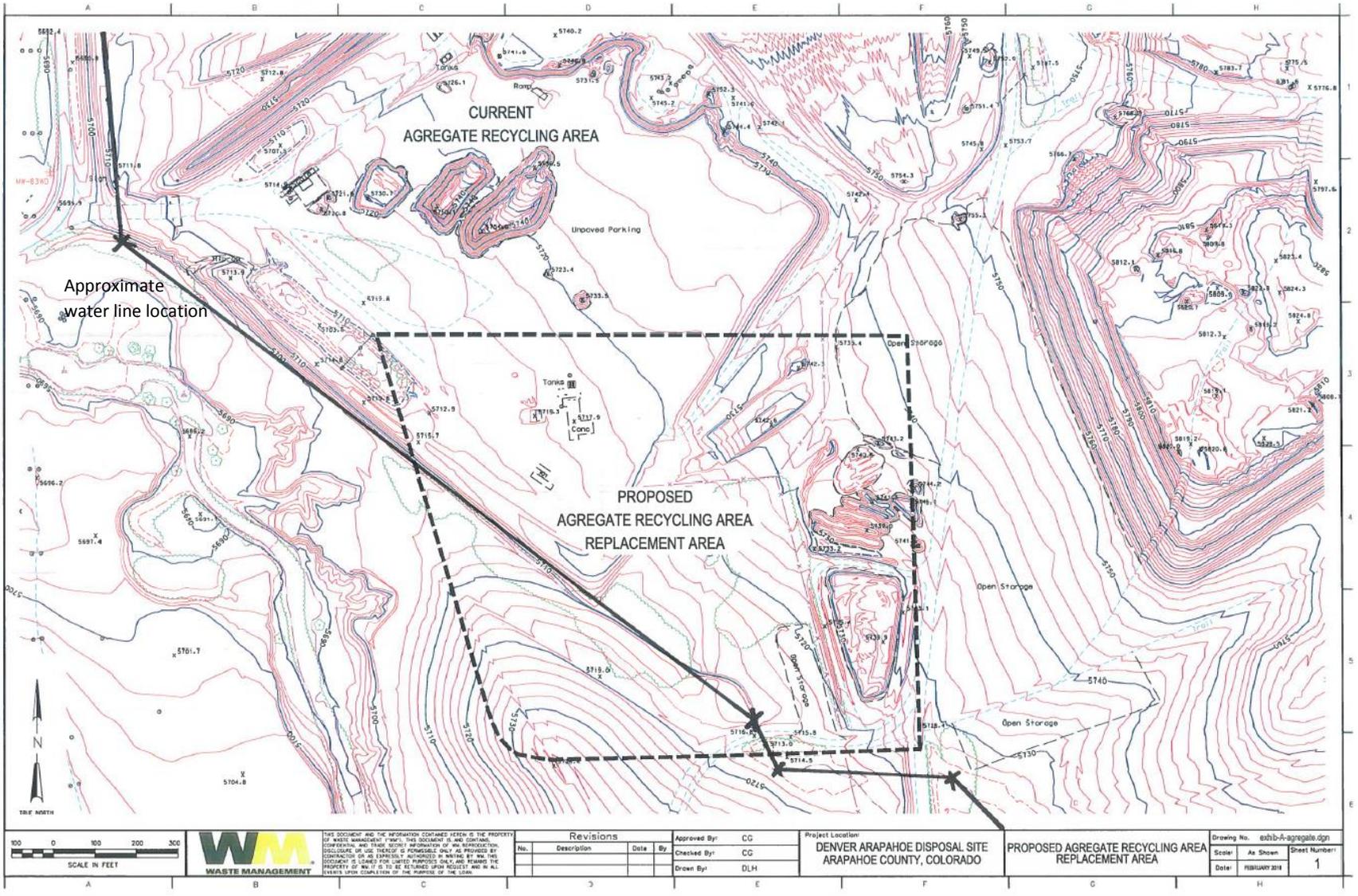
Name: ELIZABETH CLAFLIN  
(please print)

Title: SECRETARY  
(please print)





# Exhibit A



DRAWING FILE: 44521-A-Aggregate.dwg  
 PLOT DATE: 2/10/2018 2:07:18 PM



THIS DOCUMENT AND THE INFORMATION CONTAINED HEREIN IS THE PROPERTY  
 OF WASTE MANAGEMENT COMPANY. THIS DOCUMENT IS NOT TO BE  
 REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC  
 OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION  
 STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF WASTE  
 MANAGEMENT COMPANY. THIS DOCUMENT IS INTENDED FOR LIMITED PURPOSES ONLY AND REMAINS THE  
 PROPERTY OF WASTE MANAGEMENT COMPANY. IT IS TO BE RETURNED UPON REQUEST AND IN ALL  
 EVENTS UPON COMPLETION OF THE PURPOSE OF THE DRAWING.

Revisions			
No.	Description	Date	By

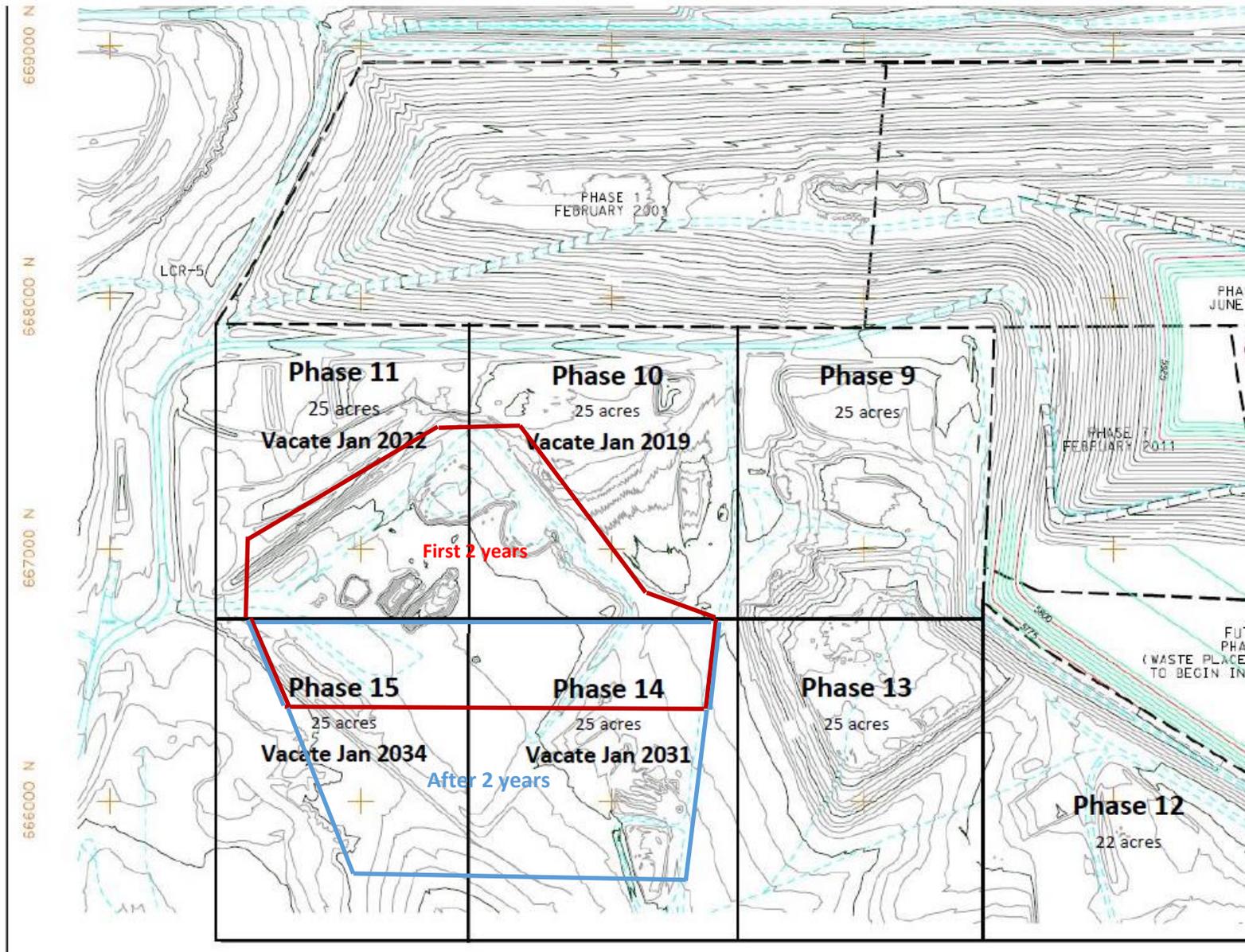
Approved By:	CG
Checked By:	CG
Drawn By:	DLH

Project Location:  
**DENVER ARAPAHOE DISPOSAL SITE**  
**ARAPAHOE COUNTY, COLORADO**

**PROPOSED AGREGATE RECYCLING AREA**  
**REPLACEMENT AREA**

Drawing No.	exhib-A-aggregate.dgn	
Scale:	As Shown	Sheet Number:
Date:	FEBRUARY 2018	1

# Exhibit B







THINKING AHEAD

FAX NUMBER: 720-913-3183  
TELEPHONE NUMBER: 720-913-3267

Assistant City Attorney  
City and County of Denver  
201 West Colfax Avenue, Dept. 1207  
Denver, Colorado 80202

RE: Asphalt Specialties Co., Inc.  
Project Name: Contract No. ENVHL-201627472-00, Lease & Agreement for  
Recycling and Processing of Concrete and Asphalt – Production Site Rental  
Amount: \$250,000.00  
Performance and Payment Bond No.: 3341367

The Performance and Payment Bonds covering the above captioned project were  
executed by this agency through Great American Insurance Company on June 2, 2016.  
We hereby authorize the City and County of Denver, Department of Environmental  
Health, to date all bonds and powers of attorney to coincide with the date of the contract.

If you should have any additional questions or concerns, please don't hesitate to give me  
a call.

Sincerely,

A handwritten signature in blue ink that reads 'Florietta'.

Florietta Acosta  
Client Service Consultant, Bonds

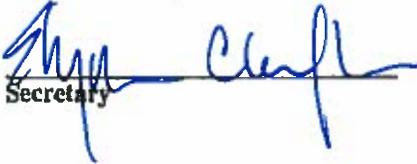


Bond No. 3341367

PROVIDED FURTHER, that the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreement, or to contracts with others in connection with the Agreement, shall in any way affect its obligation on this bond and it does hereby waive notice of any change, extension of time, alteration or addition to the terms of the Agreement.

IN WITNESS WHEREOF, Tenant and Surety have executed these presents as of June 3, 2016.

Attest:

  
Secretary

Asphalt Specialties Co., Inc.

Tenant

By:   
President

Great American Insurance Company

Surety

By:   
Attorney-In-Fact Florietta Acosta

(Accompany this bond with Attorney-in-Fact's authority from the Surety to execute bond, certified to include the date of the bond).

THE TERM OF THIS BOND IS 6/1/2016 TO 6/1/2017. THIS BOND CAN BE CONTINUED BY CONTINUATION CERTIFICATE ISSUED BY THE SURETY COMPANY. IF CONTINUED BY CONTINUATION CERTIFICATE, THIS BOND SHALL NOT BE CUMULATIVE TO THE EXTENT OF THE LIMITS OF SAID BOND EACH YEAR, AND EACH CONTINUATION CERTIFICATE SHALL HAVE THE LEGAL EFFECT OF A NEW AND SEPARATE OBLIGATION ISSUED FOR THE PERIOD STATED HEREIN.

APPROVED AS TO FORM:  
Attorney for the City and County of  
Denver

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



APPROVED FOR THE CITY AND  
COUNTY OF DENVER

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

By: \_\_\_\_\_  
Manager  
Department of Environmental Health

DUAL OBLIGEE RIDER

To be attached to and form a part of contract bond number 3341367 issued by the \_\_\_\_\_

Great American Insurance Company

on behalf of Asphalt Specialties Co., Inc.

in the amount of Two Hundred Fifty Thousand & 00/100

Dollars (\$ 250,000.00)

and dated \_\_\_\_\_ in favor of City And County of Denver, a

municipal corporation of the State of Colorado

In consideration of the sum of N/A and other good and valuable consideration receipt of which is hereby acknowledged, the Undersigned hereby agree as follows:

1. The Waste Management of Colorado, Inc.

is hereby added to said bond as an additional obligee.

2. The Surety shall not be liable under this bond to the Obligeo, or either of them unless the said Obligees, or either of them, shall make payments to the Principal strictly in accordance with the terms of the said contract as to payments, and shall perform all other obligations to be performed under said contract at the time and in the manner therein set forth.

3. No suit, action or proceeding by reason of any default whatever shall be brought on this bond after two (2) years from the day on which the final payment under said construction contract falls due.

4. Aggregate liability of Surety hereunder to Obligees is limited to the penal sum above stated and Surety, upon making payment hereunder, shall be subrogated to, and shall be entitled to an assignment of all rights of the payee with respect to the particular obligation discharged by the payment, either against principal or against any other party liable to the payee on the discharged obligation.

Signed, Sealed and Dated this \_\_\_\_\_ day of \_\_\_\_\_

City And County of Denver, Colorado, a municipal Corporation of the State of Colorado

Asphalt Specialties Co., Inc.

By \_\_\_\_\_

By  \_\_\_\_\_

Waste Management of Colorado, Inc.

Great American Insurance Company

By \_\_\_\_\_

By  \_\_\_\_\_

Florieta Acosta

Attorney-In-Fact

**GREAT AMERICAN INSURANCE COMPANY®**

Administrative Office: 301 E 4TH STREET • CINCINNATI, OHIO 45202 • 513-369-5000 • FAX 513-723-2740

The number of persons authorized by this power of attorney is not more than ONE

Bond No. 3341367

**POWER OF ATTORNEY**

**KNOW ALL MEN BY THESE PRESENTS:** That the GREAT AMERICAN INSURANCE COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Ohio, does hereby nominate, constitute and appoint the person or persons named below its true and lawful attorney-in-fact, for it and in its name, place and stead to execute on behalf of the said Company, as surety, the specific bond, undertaking or contract of suretyship referenced herein; provided that the liability of the said Company on any such bond, undertaking or contract of suretyship executed under this authority shall not exceed the limit stated below. The bond number on this Power of Attorney must match the bond number on the bond to which it is attached or it is invalid.

Name	Address	Limit of Power
Florieta Acosta	Greenwood Village, Colorado	\$100,000,000.00

IN WITNESS WHEREOF the GREAT AMERICAN INSURANCE COMPANY has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this \_\_\_\_\_ day of \_\_\_\_\_  
Attest  
GREAT AMERICAN INSURANCE COMPANY



*Atty L C. B.*

Assistant Secretary

*David C. Kitchin*

Divisional Senior Vice President

DAVID C. KITCHIN (877-377-2405)

STATE OF OHIO, COUNTY OF HAMILTON - ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, before me personally appeared DAVID C. KITCHIN, to me known, being duly sworn, deposes and says that he resides in Cincinnati, Ohio, that he is a Divisional Senior Vice President of the Bond Division of Great American Insurance Company, the Company described in and which executed the above instrument; that he knows the seal of the said Company; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by authority of his office under the By-Laws of said Company, and that he signed his name thereto by like authority.



**Susan A. Kohorst**  
Notary Public, State of Ohio  
My Commission Expires 05-18-2020

*Susan A. Kohorst*

This Power of Attorney is granted by authority of the following resolutions adopted by the Board of Directors of Great American Insurance Company by unanimous written consent dated June 9, 2008.

**RESOLVED:** That the Divisional President, the several Divisional Senior Vice Presidents, Divisional Vice Presidents and Divisional Assistant Vice Presidents, or any one of them, be and hereby is authorized, from time to time, to appoint one or more Attorneys-in-Fact to execute on behalf of the Company, as surety, any and all bonds, undertakings and contracts of suretyship, or other written obligations in the nature thereof; to prescribe their respective duties and the respective limits of their authority; and to revoke any such appointment at any time.

**RESOLVED FURTHER:** That the Company seal and the signature of any of the aforesaid officers and any Secretary or Assistant Secretary of the Company may be affixed by facsimile to any power of attorney or certificate of either given for the execution of any bond, undertaking, contract of suretyship, or other written obligation in the nature thereof, such signature and seal when so used being hereby adopted by the Company as the original signature of such officer and the original seal of the Company, to be valid and binding upon the Company with the same force and effect as though manually affixed.

**CERTIFICATION**

I, STEPHEN C. BERAHA, Assistant Secretary of Great American Insurance Company, do hereby certify that the foregoing Power of Attorney and the Resolutions of the Board of Directors of June 9, 2008 have not been revoked and are now in full force and effect.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_



*Atty L C. B.*

Assistant Secretary