

AMENDATORY AGREEMENT

This **AMENDATORY AGREEMENT** is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”) and **WASTE MANAGEMENT OF COLORADO, INC.**, a Colorado corporation with its principal place of business located at 5500 S. Quebec Street, Suite 250, Greenwood Village, Colorado 80111 (the “Contractor”), jointly (“the Parties”).

WITNESSETH:

- A. The Parties entered into Composting Agreement dated December 10, 2015 (the “Agreement”).
- B. The Parties wish to amend the Agreement to extend the term, modify Contractor’s Responsibilities, amend the Notification provisions and modify **Exhibit B**.

NOW THEREFORE, in consideration of the premises and the Parties’ mutual covenants and obligations, the Parties agree as follows:

1. Section 1.1 of the Agreement is amended to read as follows: “The term (“**Term**”) of this Agreement will begin January 1, 2016 and extend until December 31, 2019. 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. Section 3.1. of the Agreement is amended to read as follows:
“WMC shall operate the Composting Facility in accordance with the Engineering Design and Operations Plan (EDOP) as approved by CDPHE on May 26, 2011, as amended with approval by CDPHE on January 28, 2013 and as further amended and approved by CDPHE on August 26, 2015 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. Section 3.3. of the Agreement is amended to read as follows: “WMC shall accept and manage “Compostable Material,” as that term is defined in **Exhibit B**; accept water and similar liquids that meet the most recent CDPHE Regulation Number 41, The Basic Standards for Ground Water and have been determined by WMC to be suitable for application to compostable material; 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**”).”

4. Section 5.2. of the Agreement is amended to read as follows:

“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 incoming 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. The 8% of incoming revenue 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. Section 7.1.1. of the Agreement is amended to read as follows:

“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.”

6. Section 7.1.3 of the Agreement shall be added to read as follows:

“Yearly Summaries:

- 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 City rates, with an explanation statement.”

7. Section 20.1. of the Agreement is amended to read as follows:

“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 South Mill Avenue, Suite 333
Tempe, AZ 85281

With copy to: Waste Management of Colorado, Inc.
3500 South Gun Club Road
Aurora, CO 80018
Attn: Christopher Anderson, District Manager

If to City: Executive Director of Department of Public Health
and Environment
101 West Colfax Avenue, Suite 800
Denver, CO 80202

With a copy to:

Denver City Attorney’s Office
1437 Bannock Street, Room 353
Denver, CO 80202”

8. All references to “...**Exhibit B**...” in the Agreement shall be amended to read: “...**Exhibit B** and **B-1**...” as applicable. The Compostable Materials marked as **Exhibit B-1** attached to this Amendatory Agreement is hereby incorporated by reference.

9. As herein amended, the Agreement is affirmed and ratified in each and every particular.

10. This Amendatory 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.

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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-201524286-01

Contractor Name: WASTE MANAGEMENT OF COLORADO, INC.

By: SAF

Name: Scott A. Bradley
(please print)

Title: President
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



Exhibit B-1 Compostable Materials

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
- Water and similar liquids that meet the most recent CDPHE Regulation Number 41, The Basic Standards for Ground Water and has been determined by WMC to be suitable for application to compostable material
- 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.