

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2012

COUNCIL BILL NO. CB-12-0141
COMMITTEE OF REFERENCE:
BUSINESS, WORKFORCE, & SUSTAINABILITY

A BILL

For an ordinance approving a proposed Agreement between the City and County of Denver and Recycled Materials Company, Inc., related to operation and maintenance of asphalt and concrete recycle facilities at Denver International Airport.

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

Section 1. The proposed Agreement between the City and County of Denver and Recycled Materials Company, Inc., in the words and figures contained and set forth in that form of Agreement available in the office and on the web page of City Council, and to be filed in the office of the Clerk and Recorder, Ex-Officio Clerk of the City and County of Denver, under City Clerk's Filing No. 2012-0051, is hereby approved.

COMMITTEE APPROVAL DATE: February 24, 2012

MAYOR-COUNCIL DATE: February 28, 2012

PASSED BY THE COUNCIL: _____, 2012

_____ - PRESIDENT

APPROVED: _____ - MAYOR _____, 2012

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

NOTICE PUBLISHED IN THE DAILY JOURNAL: _____, 2012; _____, 2012

PREPARED BY: Debra Overn, Assistant City Attorney  DATE: March 1, 2012

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

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

BY: _____, Assistant City Attorney DATE: March 1, 2012

AGREEMENT

THIS AGREEMENT, is made and entered as of the date indicated on the City's signature page below ("**Effective Date**") by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado ("**City,**" "**Party of the First Part**"), and **RECYCLED MATERIALS COMPANY, INC.**, a Colorado corporation ("**Operator,**" "**Party of the Second Part**").

W I T N E S S E T H:

WHEREAS, the City owns and operates Denver International Airport ("**DIA**" or the "**Airport**"), and requires services related to operation and maintenance of asphalt and concrete recycle facilities at DIA, and other services as may be approved by the Manager of Aviation; and

WHEREAS, the City has solicited and received proposals for such services and has selected the proposal submitted by Operator; and

WHEREAS, Operator is qualified and ready, willing, and able to perform the services as set forth in this Agreement in a timely, efficient, and economical manner at DIA, in accordance with its proposal submitted to the City;

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

Section 1. LINE OF AUTHORITY:

The City's Manager of Aviation, her designee or successor in function (**the "Manager"**) authorizes and directs all work performed under this Agreement. Until otherwise notified by the Manager, the City's Deputy Manager of Aviation for Planning and Development ("**Deputy Manager**") is designated as the authorized representative of the Manager through whom services performed under this Agreement shall be directed and coordinated. Administrative reports, memoranda, correspondence and other submittals required of Operator shall be processed in accordance with the Deputy Manager's directions.

Section 2. SCOPE OF WORK:

A. SOW and NTP: The Operator agrees to diligently and professionally provide services as more specifically described in this Agreement and all exhibits hereto. The Operator shall perform all the services and produce all of the deliverables set out in **Exhibit A**, Scope of Work ("**SOW**"), after the City has issued a Notice to Proceed ("**NTP**"). Operator will, after it receives a written NTP, furnish all of the technical, administrative, professional, and other labor; all supplies and materials,

equipment, printing, vehicles, local travel, office space and facilities, testing and analysis, calculations, and any other facilities or resources required to perform and complete the work which is assigned under this Agreement (the “Work”).

In addition, the parties acknowledge that the Operator has agreed to host information and education sessions regarding the use of recycled aggregate for the City, its employees, agents, contractors and bidders responding to requests for proposal and bid specifications issued for construction on the Airport. Operator agrees to host such information and education sessions at its own cost and on a schedule to be mutually agreed to by the parties. City agrees to provide, at no cost to Operator, appropriate meeting space for any such information and education sessions. The Operator acknowledges that any work it performs prior to the issuance of a Notice to Proceed is performed at Operator’s risk and without authorization under this Agreement.

B. Locations and Access.

1. **Recycle Yard Locations:** Operator shall perform the SOW at the locations depicted in **Exhibit A Figures 1-1 and 1-2 (the “Recycle Yards”)**. These Figures may be changed by mutual agreement of the parties, and such change will not be deemed an amendment to this agreement. Only activities related to the SOW and other DIA-approved recycle operations may be performed at the Recycle Yards. The parties agree and understand that this Agreement is not a lease of Aviation property, but a right to access, occupy, manage, operate, control, and maintain the Recycle Yards in accordance with this Agreement and the SOW.
2. **Access:** Operator, its agents and its employees are granted a non-exclusive right of ingress to and egress from the Recycle Yards, by means of a reasonable access located outside the boundaries of the Recycle Yards as will be specified from time to time by the City. City may at any time close, relocate, reconstruct or modify such means of access, provided that a reasonably convenient and adequate means of ingress and egress is made available for the same purposes.
3. **Inconveniences During Construction.** Operator recognizes that from time to time during the Term of this Agreement it may be necessary for the City to commence or complete construction, expansion, relocation, maintenance, and repair of roads or other Airport facilities in the Vicinity of the Recycle Yards, in order that the Airport and its facilities may be operated in accordance with any present or future master Airport layout plan, and that such activities may inconvenience the Operator. Operator agrees that no liability shall attach to City, its officers, agents, employees, contractors, subcontractors and representatives by way of such inconveniences, and Operator waives any right to claim damages or other consideration therefrom. The Department of Aviation will cooperate with Operator and use good faith efforts to avoid

material interference with the operations in the Recycle Yard during such programs.

4. **City Right of Entry:** City, as owner of the Recycle Yards, retains the full right of entry in and to the Recycle Yards (i) for any purpose necessary, incidental to or in connection with its obligations hereunder or in the exercise of the City's governmental functions, (ii) for the purpose of making any inspection it deems necessary, or (iii) for any other legitimate and reasonable purpose of the City. Except in the case of emergency or in accordance with its governmental functions, City agrees to exercise good faith in notifying Operator within a reasonable time in advance of all entries into the Recycle Yards, so as to minimize disturbance to Operator, and to coordinate such entries with Operator's work and take reasonable precautions to avoid disturbance or interference with Operator's approved operations. The foregoing rights of entry include access for contractors, employees and/or agents, and third parties acting with permission of the City, provided that the City shall cause such third parties to use reasonable efforts to minimize interference with the business or operations of Operator.
5. **Utilities:** City reserves for itself the right to install utilities upon areas of the Recycle Yards as necessary or convenient for the operation of the Airport, and the City further shall have the right to grant easements in such areas for the installation of utilities, provided that the use of such areas or the grant of such easements does not unreasonably interfere with the Operator's use of the Recycle Yards. Operator shall not be entitled to any compensation based on this use of the Recycle Yards.
6. **Relocation:** If the Manager determines that the area on which the Recycle Yards are located is required for airport operations, the Manager shall have the right to require relocation of the Recycle Yards, and shall provide six (6) months prior written notice to Operator of such relocation. If relocation of any of the Recycling Yards is required, Operator may (i) elect to terminate the Agreement, and shall be compensated for any such termination costs in accordance with Section 23 of this Agreement, as if the termination is a termination without cause, or (ii) elect to be relocated. Operator shall provide services to the City associated with relocation in accordance with the Schedule of Prices attached hereto as **Exhibit E**.

C. Professional Responsibility: The Operator shall faithfully perform the Work required under this Agreement in accordance with standard of care, skill, training, diligence, and judgment provided by highly competent professionals who perform work of a similar nature to the Work described in this Agreement.

D. Aviation Rules: Operator agrees to perform its Work under this Agreement in accordance with the operational requirements of DIA, including as is stated

in the Rules and Regulations of the Department of Aviation, and all Work and movement of personnel or equipment on areas included within the DIA site shall be subject to the regulations and restrictions established by the City or its authorized agents.

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

F. Encouragement of Recycling and Use of Recycled Materials: The City shall use best efforts to encourage all asphalt and concrete rubble and debris generated at the Airport (“**Airport Materials**”) to be delivered to the Recycle Yards for processing by Operator, and City shall make good faith efforts to include information about the Recycle Yards in all requests for proposal and bid specifications issued for design or construction on the Airport and encourage the use of recycled products produced at the Recycle Yards from Airport Materials.

Notwithstanding the foregoing, City reserves the right to allow others to perform limited rubble and debris recycling services for specific projects at the Airport.

G. Materials Planning: To accommodate fluxuations in DIA material requirements and to avoid excess accumulation of Airport Materials, the SOW permits the Operator to accept material from Third Parties and to conduct sales of the recycled aggregate to Third Parties, as provided in Exhibit A. Accordingly, for Operator’s planning and management purposes, DIA will provide the Operator with quarterly projections for incoming Airport Materials, and for expected DIA purchases of recycled aggregate for Airport projects, as provided in Exhibit A (“**Quarterly Projections**”).

Section 3. COMPENSATION AND PAYMENT:

A. Operator Fees Charged to the City:

1. Compensation to Operator: The City hereby agrees to pay the Operator, and Operator agrees to accept as compensation for Work provided to the City under this Agreement payment as described in more detail in **Exhibit B**, entitled “Progress Reporting and Invoicing,” and in the Schedule of Prices attached as **Exhibit E**. Operator will offer the City’s rates for services rendered and materials provided to all contractors of the City or the FAA for Airport projects, and to contractors performing services through other contracts for Airport projects (“**DIA Contractors**”). On the first business day of each year, beginning on January 1, 2012, the prices set forth in the Schedule of Prices will be adjusted by the percentage change in the Producer Price Index for the commodities of sand, gravel, and stone, as published by the United States Department of Commerce, Bureau of Labor

Statistics (the "Sand and Gravel Index") during the preceding twelve (12) months.

2. Terms of Payment: Payments by the City will be made to Operator in accordance with the City's Prompt Payment Ordinance, D.R.M.C. §§ 20-107, *et. seq.*, subject to the Maximum Contract Liability set forth below. Operator agrees that interest and late fees shall be payable by the City hereunder only to the extent authorized and provided for in the City's Prompt Payment Ordinance.

3. Invoices: Payments by the City to the Operator shall be based upon **Exhibit B** and upon invoices and receipts submitted to the City by Operator monthly, or as otherwise mutually agreed to by the parties, that have been audited and approved by the City. The invoice format shall be agreed upon by the parties.

The City reserves the right to reject and not pay any invoice or part thereof where the Manager determines that the amount invoiced exceeds the amount which should be paid based upon the Work which has been performed. The City, however, shall pay any undisputed items contained in an invoice. Disputes concerning payments under the provisions of this Agreement shall be resolved by administrative hearing pursuant to the procedures of Denver Revised Municipal Code § 5-17.

4. Additional Services: Operator may also perform services hereinafter referred to as Additional Services, which relate to the subject matter of the Agreement but which the Deputy Manager determines to be not described in the Scope of Work or in excess of the requirements of the Scope of Work. Operator shall be compensated for such Additional Services only if the services and the amount of fees and reimbursable expenses for such services have been authorized in writing in advance by the Deputy Manager or his designated representative. If Operator performs additional services under this Agreement, it shall be paid a negotiated lump sum or time and material costs as set out in **Exhibit B** attached hereto. The total amount of Additional Services shall not exceed **Five Hundred Thousand Dollars (\$500,000.00)**, and in no event shall the approval of Additional Services and the cost of performing them be deemed to constitute an agreement by the City to an increase in the Maximum Contract Liability.

5. Prevailing Wage: Operator shall comply with the City's Prevailing Wage Ordinance, D.R.M.C. §§ 20-76 *et seq.*, to the extent that Ordinance applies to Operator's activities under this Agreement. The Operator is prohibited from hiring any subcontractor that is currently debarred by the City in accordance with D.R.M.C § 20-77.

B. Payment to the City for Third Party Sales:

1. Compensation to the City: Operator covenants and agrees to pay to City as partial compensation for the rights and privileges hereunder, five percent (5%) of the gross revenues derived by Operator from the sale to Third Parties of materials or products that it is authorized to sell under the terms of this Agreement. "Third Parties" for purposes of this subparagraph shall mean any parties except the DIA Contractors.

2. Monies Held in Trust: Immediately upon Operator's receipt of monies from the sale to Third Parties of materials or products that it is authorized to sell under the terms of this Agreement, the percentages of said monies belonging to City shall vest in and become the property of the City. Operator shall be responsible as trustee for said monies until the same are delivered to City.

C. Place and Manner of Payments:

1. Payment Offset:

When preparing invoices pursuant to Section 3.A.3 above and Exhibit B, Operator shall offset the amount the City owes to the Operator for services and materials by the amount Operator may owe due to the City for third party sales during the time period covered by the invoice. The sales on which the offset is based shall be documented on the invoice in the manner prescribed in this agreement.

2. Place of Payment to City:

Any sums payable to City hereunder shall be made ten (10) business days following the first day of each month without notice at the following address:

Airport Revenue Fund
Denver International Airport
P. O. Box 492065
Denver, Colorado 80249-2065

or at such other place as the Manager or her authorized representative may hereafter designate by notice in writing to Operator. All sums shall be made in legal tender of the United States. Any check given to the City shall be received by it subject to collection, and Operator agrees to pay any charges, fees or costs incurred by the City for such collection, including reasonable attorney's fees.

Section 4. BOOKS OF ACCOUNT AND AUDITING:

A. Operator shall keep or make available upon request true and complete records and accounts of all Gross Revenues (as defined below) and business transacted under this Agreement, including daily bank deposits. Not later than June 15th of each and every year during the Term, Operator shall furnish to City a true and accurate statement of the total of all revenues and business transacted under this Agreement ("Gross Revenues") during the preceding calendar year (listing the deductions or exclusions authorized by the Deputy Manager in computing the amount of such Gross Revenues and business transactions, and including a breakdown of Gross Revenues on a month-by-month basis). Such statement shall be prepared and certified to be true and correct by an independent certified public accountant who has audited such Gross Revenues in accordance with generally accepted accounting procedures for special reports, except that if Operator is a participant in the Airport's daily revenue reporting program and complies with the conditions of the program as set forth above, such statement, starting with the statement due in 2012, may be signed by an officer of the Operator. Such statement shall be furnished for every calendar year in which business was transacted under this Agreement during the whole or any part of the year. The above-requirements for the annual statement may be modified by the Manager, in her sole discretion, if such modification is in the best interest of the City.

B. Operator agrees to establish and maintain a system of bookkeeping satisfactory to the City's Auditor. Such system shall be kept in a manner as to allow each location of the Operator's operations hereunder to be distinguished from all other locations or operations of Operator. Operator shall keep and preserve for at least three years, or until sooner audited by City, all sales slips, cash register tapes, sales books, bank books, or duplicate deposit slips, and all other evidence of Gross Revenues and business transacted for such period, to the extent such documents relate, directly or indirectly, to Operator's operations under this Agreement. The City's Auditor and Manager and their respective authorized representatives shall have the right at any time to inspect or audit all of the books of account, bank statements, documents, records, returns, papers, and files of Operator relating to the Gross Revenues and business transacted, to the extent such documents relate, directly or indirectly, to Operator's operations under this Agreement.

C. Operator, upon written request, shall make all such documents available for examination within the Denver metropolitan area; or shall pay in full, in advance, travel and related expenses of a City representative to travel to any location outside the Denver area for such examination. Following the travel, expenses shall be reconciled, and any difference between the advance payment and the actual expenses shall be paid to or refunded by the Operator, as appropriate. Such documents shall be available to the City representative within fourteen (14) calendar days of the date of the written request.

D. If City determines after an audit for any year that the Gross Revenues and

business transacted shown by Operator's statement for such year was understated, Operator shall pay the amount of the deficiency plus interest at the Past Due Interest Rate. If the Gross Revenues were understated by more than three percent (3%), Operator shall pay to City the cost of the audit, in addition to the deficiency and interest. The City's right to perform such an audit shall expire three years after Operator's statement for that year has been delivered to the City.

E. Operator expressly agrees that the Manager, the Auditor of the City, or an authorized representative of the Auditor or the City may inspect any documents, returns, data, or reports filed pursuant to Chapter 53 of the Revised Municipal Code by Operator with the City's Manager of Revenue, and any related reports, documents, data or other information generated by the City's Manager of Revenue or employees under the control of the Manager of Revenue in connection with any investigation or audit of Operator by the City's Department of Revenue. Operator authorizes and permits the inspection of such documents, data, returns, reports, and information, to the extent such documents relate, directly or indirectly, to Operator's operations hereunder, by the Manager, Auditor, or an authorized representative of the Auditor, and, further, waives any claim of confidentiality that it may have in connection with such documents, returns, data, reports, and information.

Section 5. MAXIMUM CONTRACT LIABILITY; FUNDING:

A. Any other provision of this Agreement notwithstanding, in no event shall the City be liable for payment to the Operator for any amount in excess of the sum of Seven Million Dollars (\$7,000,000.00) during the Term of this Agreement: ("**Maximum Contract Liability**"). Payments made to the Operator by DIA Contractors shall not be considered payments by the City for purposes of this Section.

B. The obligations of the City under this Agreement shall extend only to monies appropriated for the purpose of this Agreement by the City Council, paid into the City Treasury, and encumbered for the purposes of this Agreement. Operator acknowledges that (i) City does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

C. Payment under this Agreement shall be paid from the City and County of Denver Airport System Operation and Maintenance and Capital Improvement Funds. The City has no obligation to make payments from any other source. The City is not under any obligation to make any future encumbrances or appropriations for this contract nor is the City under any obligation to amend this Agreement to increase the Maximum Contract Liability above.

D. If the City has reached its Maximum Contract Liability, Operator shall have no further obligation to provide any services or materials to the City for which the City is

obligated to make payment to Operator under this Agreement, unless and until the City has amended this Agreement to increase the Maximum Contract Liability. However, Operator shall continue to provide such services and materials to DIA Contractors at the City's rates for purchases of such services and materials set forth in the Schedule of Prices attached as **Exhibit E** hereto.

Section 6. ENVIRONMENTAL REQUIREMENTS:

A. Compliance: Operator is required to comply with all federal, state, and local environmental rules, regulations, and requirements. This includes compliance with the requirements outlined in the attached **Exhibit C, Environmental Controls**, and DIA Rule and Regulation 180, concerning DIA's Environmental Management System. Operator shall acquire all necessary federal, state, local and airport permits and comply with all permit requirements. Any hazardous materials not normally used in Operator's operations hereunder are barred from the Recycle Yards. Operator shall identify to the City all hazardous materials to be used at the Recycle Yards.

Operator hereby specifically agrees to indemnify and hold City harmless from and against any and all claims, losses, liability, remedial action requirements, enforcement actions of any kind, or costs and expenses, including attorney fees, incurred in connection with or arising from the presence of any hazardous materials or release of any hazardous materials on, under or emanating from the Recycle Yards relating to use or occupation of the Recycle Yards, or any activity undertaken on or off the Recycle Yards in connection with cleanup, handling, treatment, transport or disposal of any hazardous materials on or emanating from the Recycle Yards relating to Operator's use or occupation of the Recycle Yards in violation of applicable federal, state and local environmental laws, rules and regulations.

B. Spill/Release Response And Cleanup. In the event of a suspected or confirmed spill or release or threat of a spill or release of any substance or material relating to or arising out of the Operator's use or occupancy of the Recycle Yards, Operator shall immediately notify the DIA Communications Center (303-342-4200). In the event any claim, demand, action, or notice is made against the City or the Operator with regard to the Operator's failure or alleged failure to comply with any legal requirement, Operator shall provide the City with copies of any written claims, demands, notices or actions so made.

Operator shall undertake all actions necessary to remediate any spill/release discovered on or under the Recycle Yards introduced by or affected by Operator as is necessary to restore the Recycle Yards to either its condition immediately prior to the initiation of this Agreement or to a condition in compliance with all applicable local, state, federal or Airport laws, rules, regulations or orders, including Aviation Rule and Regulation 180, at the City's sole discretion. This work shall be performed at Operator's expense and the City shall have the right to review and inspect all such work at any time using consultants and representatives of the City's choice. Operator shall further conduct

all necessary and prudent surface and subsurface monitoring pertaining to Operator's activities hereunder to ensure compliance with applicable laws, rules, regulations, and permits. Operator shall make available to the City copies of all correspondence to and from any regulatory agency regarding a suspected or confirmed spill or release including any records documenting verbal spill notifications.

C. Assessment and/or remediation of spills/releases from Operator's activities that will require intrusive work deeper than six inches (6") below ground surface or use of mechanized equipment are specifically not included in the rights granted by this Agreement. An access agreement will be required for such activities. Operator shall request any required access agreement through Airport Legal Services.

D. The City shall have a right of access to the Recycle Yards without prior notice to inspect the same to confirm that Operator is using the Recycle Yards in accordance with this Agreement. At the City's request, Operator shall conduct any further testing and analysis as is necessary to ascertain whether the Operator is in compliance with this Agreement.

E. Notwithstanding anything in this Agreement to the contrary, in no event shall Operator be obligated to indemnify, release, reimburse or save harmless the City, its officers, agents and employees, from any claims, damages, suits, costs, expenses, liability actions or proceedings of any kind or nature related to Existing Contamination and the City covenants not to sue Operator with respect to such Existing Contamination, unless Operator's acts or omissions, without regard to negligence, caused or exacerbated a release of such Existing Contamination.

"Existing Contamination" shall include without limitation "hazardous materials" as defined below, and in implementing regulations and Colorado laws; petroleum or refined petroleum products and their constituents; waste oils; natural gas; radioactive source material; and de-icing chemicals, existing on the Recycle Yards as a result of the actions or omissions of any party except the Operator on or prior to the Yard Completion Date, as defined below. "Hazardous Materials" shall mean substances, materials or waste, the generation, handling, storage, treatment or disposal of which is regulated by any local, state or federal government authority or laws, as a "hazardous waste," "hazardous material," "hazardous substance," "pollutant" or "contaminant" and including, without limitation, those designated as a "hazardous substance" under Section 311 or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Secs. 1321, 1317), defined as a "hazardous waste" under Section 1004 of the Resource Conservation and Recovery Act (42 U.S.C. Sec. 6903), or defined as a "hazardous substance" under Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Sec. 9601), and, including, without limitation, petroleum products and byproducts, PCBs and asbestos.

The City acknowledges that a substantial quantity of rubble and other materials are present in the Recycle Yards as of the Effective Date and that processing and clearing of such existing material will be necessary to implement the approved yard layout contemplated in Exhibit A and to accept new Airport and Third Party materials. Operator agrees to notify the Manager immediately if during the course of the implementation of the approved yard layout, if Operator encounters any visible, odorous, or otherwise recognizable Existing Contamination on the Recycle Yards. The City will, upon such notification, perform at its cost, all reasonable and appropriate sampling and analysis of such Existing Contamination. The Operator shall proceed at other locations on the Recycle Yards until the City has completed testing and/or remediation, if any, of the area in question.

The date of completion of construction of the approved yard layout and any remediation required pursuant to this paragraph shall be considered the "Yard Completion Date." If the implementation of the approved yard layout is accomplished in phases, the Yard Completion Date for such phase shall be considered the date of the completion of construction and remediation in the area of the Recycle Yards designated for completion in such phase. Operator shall provide written notice to the City of the Yard Completion Date(s).

Section 7. USE OF RECYCLE YARDS:

A. Hours of Operation: Operator agrees to keep its facilities open for business for a minimum of 40 hours per week, unless otherwise authorized beforehand in writing by the Manager or her authorized representative. Operator will extend work hours as requested by DIA's Deputy Manager at no additional charge to the Airport.

B. Care of Area: Operator agrees that it will keep the Recycle Yards in a neat, clean, safe, sanitary and orderly condition at all times, and further agrees that it will keep such area free at all times of all paper, rubbish, spills, and debris. Operator, at its own expense, shall collect and deposit all trash and refuse at frequent intervals from the Recycle Yards. Accumulation of boxes, cartons, barrels or other similar items shall not be permitted.

C. Waste or Impairment of Value: Operator agrees that nothing shall be done or kept in the Recycle Yards which might impair the value of the City's Recycle Yards or which would constitute waste or a public or private nuisance.

D. Structural or Electrical Overloading: Operator agrees that nothing shall be done or kept in the Recycle Yards and no improvements, changes, alterations, additions, maintenance or repairs shall be made to the Recycle Yards which might result in an overload of utility lines serving the Airport or interfere with electric, electronic or other equipment at the Airport. In the event of violations hereof, Operator agrees to immediately remedy the violation at Operator's expense.

E. Noise, Odors, Vibrations And Other Annoyances: The Operator shall comply with any applicable municipal noise control ordinance during all working hours. Operator shall conduct its operations in an orderly and proper manner so as not to commit any nuisance on the Recycle Yards or annoy, disturb or be offensive to others at the Airport and shall take all reasonable measures, using the latest known and practicable devices and means, to eliminate any unusual, noxious, or objectionable noise, vapors, odors, lights and vibrations. Notwithstanding the foregoing, the City acknowledges that the orderly and property operation of the Recycle Yards may result in noise and vibrations and agrees that the normal operation of the Recycle Yards in compliance with any applicable municipal noise ordinance shall not be considered a nuisance hereunder.

F. Accessibility: Operator shall not do or permit to be done anything, which might interfere with or hinder police, firefighting or other emergency personnel in the discharge of their duties.

G. Utilities: Operator, at its sole cost and expense, shall make and obtain all utility connections, hook-ups or taps as necessary for the operation of the improvements on the Recycle Yards and shall secure all necessary applications and permits and shall pay all application and permit fees, hook-up or tap fees. Operator further agrees at its sole cost and expense to provide meters adequate to measure the amount of utilities and water used or consumed and to maintain said equipment in such a manner as to supply accurate measurements of such usage and consumption. Operator shall be responsible for the payment of all utilities required for operations in the Recycle Yards

H. Drainage: Operator shall either be responsible for detaining in the Recycle Yards the developed flow from its improvements and discharging such flow at its historic rate or constructing offsite detention ponds at a location acceptable to the Manager. Operator shall maintain such drainage facilities, including any pond required for the site, and shall be responsible for "MS4" permit requirements.

Operator agrees to insure that an agreement for drainage crossing or slope created by Operator's construction and any discharge point from the Recycle Yards shall be constructed with capacity to pass storm from the 100-year developed flow with adequate freeboard in accordance with the requirements of Urban Drainage and Flood Control District and the City. Operator shall keep such drainageways clear of debris and obstructions and maintain them in good condition for the passage of the required flow and avoid erosion degradation. If Operator does not so maintain the system, the City will notify Operator, and if Operator does not perform the needed maintenance within thirty (30) days of the notice, then Operator agrees that the City will have the right to do so and Operator will reimburse all reasonable costs invoiced to Operator by the City for such maintenance.

Section 8. TERM:

A. The Term of this Agreement shall commence on March 1, 2012, and shall terminate February 28, 2017, unless sooner terminated as provided in this Agreement.

B. It is a specific provision of this Agreement that the Manager in her discretion may renew and continue this Agreement, under the same terms and conditions, for up to three (3) additional five (5) year periods. The Manager may exercise this discretion by sending Operator, the City Clerk, and the City Attorney a letter notification invoking this paragraph. Any such extension will not be considered an amendment to this Agreement.

C. In addition, the term of this Agreement may be extended in the Manager's discretion by written notice to the Operator, to allow the completion of any Work which has been commenced prior to the date upon which this Agreement otherwise would terminate.

D. The Term of this Agreement otherwise may be modified only by amendment to this Agreement.

E. No extension of the Agreement Term through Section 3.01.B. or C. shall increase the Maximum Contract Amount stated herein. The Maximum Contract Amount may be changed only by a duly executed written amendment to this Agreement.

Section 9. EXAMINATION OF RECORDS:

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

B. The City and the Auditor of the City or any of his duly authorized representatives, until the expiration of three years after the final payment under this Agreement, shall have access to and the right to examine any directly pertinent books, documents, papers and records of Operator which are related to Work under this Agreement without regard to whether the Work was paid for in whole or in part with federal funds or was otherwise related to a federal grant program.

Section 10. STATUS OF OPERATOR:

It is agreed and understood by and between the parties hereto that the status of Operator shall be that of an independent Operator retained on a contractual basis to perform professional or technical services for limited periods of time as described in Section 9.1.2 (C) of the Charter of the City and County of Denver, and it is not intended, nor shall it be construed, that Operator or its personnel are employees or officers of the City under D.R.M.C. Chapter 18 for any purpose whatsoever.

Section 11. ASSIGNMENT:

Operator shall not assign, pledge or transfer its duties and rights under this Agreement, in whole or in part, without first obtaining the written consent of the Manager. Any attempt by Operator to assign or transfer its rights hereunder without such prior written consent shall, at the option of the Manager, automatically terminate this Agreement and all rights of Operator hereunder. Such consent may be granted or denied at the sole and absolute discretion of the Manager.

Section 12. SUBCONTRACTORS:

A. Although Operator may retain, hire, and contract with outside subcontractors for Work under this Agreement, no final agreement or contract with any such subcontractor shall be entered into without the prior written consent of the Manager or his authorized representative. Requests for such approval must be made in writing and include a description of the nature and extent of the services to be provided, the name, address and professional experience of the proposed subcontractor, and any other information requested by the Manager. Any final agreement or contract with an approved subcontractor must contain a valid and binding provision whereby the subcontractor waives any and all rights to make any claim of payment against the City or to file or claim any lien or encumbrance against any City property arising out of the performance or non-performance of the contract.

B. Because Operator's represented professional qualifications are a consideration to the City in entering into this Agreement, the Manager shall have the right to reject any proposed outside subcontractor for this Work deemed by him, in his sole discretion, to be unqualified or unsuitable for any reason to perform the proposed services, and the Manager shall have the right to limit the number of outside subcontractors to limit the percentage of Work to be performed by them, all in his sole and absolute discretion.

Section 13. PROMPT PAY TO SUBCONTRACTORS:

Operator is subject to D.R.M.C. Section 20-112 wherein Operator is to pay its subcontractors in a timely fashion. A payment is timely if it is mailed to the subcontractor no later than seven days after receipt of any payment from City. Any late payments are

subject to a late payment penalty as provided for in the prompt pay ordinance (D.R.M.C. Sections 20-107 through 20-118).

Section 14. NO DISCRIMINATION IN EMPLOYMENT:

In connection with the performance of Work under this Agreement, Operator agrees not to fail or refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation, terms, conditions or privileges of employment 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; and Operator further agrees to insert the foregoing provision in all subcontracts hereunder.

Section 15. INSURANCE:

A. Operator shall obtain and keep in force during the entire term of this Agreement, all of the insurance policies described in the City's form of insurance certificate which is attached to this Agreement as **Exhibit D** and incorporated herein. Upon execution of this Agreement, Operator shall submit to the City a fully completed and executed original of the attached insurance certificate form, which specifies the issuing company or companies, policy numbers and policy periods for each required coverage. In addition to the completed and executed certificate, Operator shall submit a copy of a letter from each company issuing a policy identified on the certificate, confirming the authority of the broker or agent to bind the issuing company, and a valid receipt of payment of premium.

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

C. Operator shall comply with all conditions and requirements set forth in the insurance certificate for each required coverage during all periods in which coverage is in effect.

D. Unless specifically excepted in writing by the City's Risk Management Administrator, Operator shall include all subcontractors performing services hereunder as insureds under each required policy or shall furnish a separate certificate (on the form certificate provided), with authorization letter(s) for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements set forth in the form certificate and Operator shall insure that each subcontractor complies with all of the coverage requirements.

E. The parties understand and agree that the City and County of Denver, its officers, officials and employees, are relying on, and do not waive or intend to waive by

any provisions of this agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 to 120, or otherwise available to the City and County of Denver, its officers, officials and employees.

Section 16. INDEMNIFICATION:

Subject to Section 6.E hereof, Operator hereby agrees to indemnify and hold harmless the City, its officers, agents and employees, from and against any and all loss of or damage to property or injuries to or death of any person or persons, including property and employees or agents of the City, and shall indemnify, defend and hold harmless the City and its officers, agents and employees from any and all claims, damages, suits, costs, expenses, liability, actions, or proceedings of any kind or nature whatsoever, of or by anyone whomsoever, in any way resulting from or arising out of, directly or indirectly, Operator's performance under this Agreement or its occupancy of City-owned property or other property upon which Work is performed under this Agreement, and including acts and omissions of Operator's officers, employees, representatives, suppliers, invitees, Operators and agents; provided, however, that Operator's obligation to indemnify or hold harmless the City, its officers, agents and employees under this paragraph shall not apply to liability or damages resulting from the negligence or willful misconduct of the City's officers, agents and employees or its other contractors, licensees or lessees. Operator's obligations set out in this paragraph shall survive the termination of this Agreement. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of Operator. Operator shall maintain, at its own expense, any additional kinds and amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

Section 17. COMPLIANCE WITH ALL LAWS AND REGULATIONS:

A. All of the Work performed under this Agreement by Operator shall comply with all applicable laws, rules, regulations and codes of the United States and the State of Colorado and with the charter, ordinances and rules and regulations of the City and County of Denver.

B. Operator agrees to promptly pay all excises, license fees and permit fees of whatever nature applicable as of the date first set forth above to its operations hereunder and to take out and keep current all municipal, state or federal licenses required for the conduct of its business at and upon the Recycle Yards and further agrees not to permit any of said excises, license fees, or permit fees to become delinquent.

C. Operator shall pay all taxes and assessments of whatever character that may be levied, assessed, or charged upon the possessory interest, personal property or property

occupied, used, or owned by the Operator, or upon the rights of the Operator to occupy the Recycle Yards, or upon the Operator's improvements and any other property thereon.

D. The City shall not be liable for the payment of taxes, late charges or penalties of any nature. The price of all goods/services shall reflect all applicable tax exemptions. City's Federal Registration No. is 84-6000580 and its State Registration No. is 98-02890. Operator shall pay all sales and use taxes on any tangible personal property built into the goods/services.

E. Operator also shall not create, permit, or suffer to be created or to remain, nor to permit any mechanic's or materialman's or any other lien to become attached or be foreclosed upon the Recycle Yards or improvements thereto, or any part or parcel thereof, by reason of any construction, services, work or labor performed or materials furnished by any mechanic or material man. Operator shall, within fifteen (15) calendar days after the filing of any lien, cause such lien to be released of record by payment, bond, or order of a court of competent jurisdiction. In the event Operator fails to clear the record of any such lien within the aforesaid period, the City may remove said lien by paying the full amount thereof, or by bonding, or in any other manner the City deems appropriate, without investigating the validity thereof, and irrespective of the fact that Operator may contest the propriety or the amount thereof. Thereafter Operator shall, upon demand, pay the City the amount paid by the City in connection with the discharge of said lien, plus a twenty percent (20%) administrative fee, and all reasonable expenses incurred in connection therewith, including reasonable attorneys' fees, which amounts are due and payable to the City on the first (1st) day of the month following payment by the City. Nothing contained in this Agreement shall be construed as consent on the part of the City to subject the Recycle Yards to any lien or liability.

Section 18. COMPLIANCE WITH PATENT, TRADEMARK AND COPYRIGHT LAWS:

A. Operator agrees that all Work performed under this Agreement shall comply with all applicable patent, trademark and copyright laws, rules, regulations and codes of the United States. Operator will not utilize any protected patent, trademark or copyright in performance of its Work unless it has obtained proper permission and all releases and other necessary documents. If Operator prepares any documents which specify any material, equipment, process or procedure which is protected, Operator shall disclose such patents, trademarks and copyrights in the construction drawings or specifications.

B. Operator further agrees to release, indemnify and save harmless the City, its officers, agents and employees, pursuant to Paragraph 13, "Indemnification," from any and all claims, damages, suits, costs, expenses, liabilities, actions or proceedings of any kind or nature whatsoever, of or by anyone whomsoever, in any way resulting from, or arising out of, directly or indirectly, the performance of Work under this Agreement which infringes upon any patent, trademark or copyright protected by law.

Section 19. ADVERTISING AND PUBLIC DISCLOSURES:

Operator shall not include any reference to this Agreement or to Work performed hereunder in any of its advertising or public relations materials without first obtaining the written approval of the Manager. Nothing herein, however, shall preclude Operator's use of this Agreement and its component parts in GSA form 254 or 255 presentations, or the transmittal of any information to officials of the City, including without limitation, the Mayor, the Manager, any member or members of City Council, and the Auditor.

Section 20. COLORADO OPEN RECORDS ACT:

Operator acknowledges that the City is subject to the provisions of the Colorado Open Records Act, Colorado Revised Statutes §§24-72-201 *et seq.*, and Operator agrees that it will fully cooperate with the City in the event of a request or lawsuit arising under such act for the disclosure of any materials or information which Operator asserts is confidential and exempt from disclosure. Any other provision of this Agreement notwithstanding, including exhibits, attachments and other documents incorporated into this Agreement by reference, all materials, records and information provided by Operator to the City shall be considered confidential by the City only to the extent provided in the Open Records Act, and Operator agrees that any disclosure of information by the City consistent with the provisions of the Open Records Act shall result in no liability of the City.

Section 21. SENSITIVE SECURITY INFORMATION:

Operator acknowledges that, in the course of performing its Work under this Agreement, that it may be given access to Sensitive Security Information ("SSI"), as that material is described in federal regulations, 49 C.F.R. part 1520. Operator specifically agrees to comply with all requirements of the applicable federal regulations and DIA Standard Policy and Procedure 6003. Operator understands any questions it may have regarding its obligations with respect to SSI must be referred to the Deputy Manager or his or her designated representative.

Section 22. AIRPORT SECURITY:

A. It is a material requirement of this Agreement that Operator shall comply with all rules, regulations, written policies and authorized directives from the City and/or the Transportation Security Administration with respect to Airport security. Operator shall conduct all of its activities at the Airport in compliance with the Airport security program, which is administered by the Security Section of the Airport Operations Division, Department of Aviation. Violation by Operator or any of its employees or subcontractors of any rule, regulation, or authorized directive from the City or the Transportation Security Administration with respect to Airport Security shall be grounds for immediate termination by the City of this Agreement for cause.

B. Upon execution of this Agreement, Operator shall promptly meet with the Airport's Assistant Security Manager to establish badging requirements for Operator's operations under this Agreement. Operator shall obtain the proper access authorizations for all of its employees and subcontractors who will enter the Airport to perform Work or make deliveries, and shall be responsible for each such person's compliance with all Airport rules and regulations, including without limitation those pertaining to security. Any person who violates such rules may be subject to revocation of his/her access authorization. The failure of Operator to complete any required services hereunder shall not be excused on account of the revocation for good cause of access authorization of any person.

C. The security status of the Airport is subject to change without notice. If the security status of the Airport changes at any time during the term of this Agreement, Operator shall take immediate steps to comply with security modifications which occur as a result of the changed status. Operator may at any time obtain current information from the Airport Security Office regarding the Airport's security status in relation to Operator's operations at the Airport.

D. Operator shall return to the City at the expiration or termination of this Agreement, or upon demand by the City, all access keys or access badges issued to it for any area of the Airport, whether or not restricted. If Operator fails to do so, Operator shall be liable to reimburse the City for all the City's costs for work required to prevent compromise of the Airport security system. The City may withhold funds in the amount of such costs from any amounts due and payable to Operator under this Agreement

Section 23. TERMINATION:

A. The City has the right to terminate this Agreement without cause upon six (6) months prior written notice to the Operator, and for default upon ten (10) days prior written notice to Operator (either, a "Notice of Termination"). In the event of default hereunder, Operator shall be allowed five (5) days to commence remedying its defective performance following Operator's receipt of Notice of Termination, and in the event Operator diligently cures its defective performance to the City's satisfaction within a reasonable time as determined solely by the City, then this Agreement shall not terminate. However, nothing herein shall be construed as giving Operator the right to perform services under this following a termination for default.

B. If City terminates this Agreement for default before Work under this Agreement has been completed, or if Operator's services are for any reason terminated, stopped or discontinued because of the inability of Operator to provide service under this Agreement, Operator shall be paid only for Work satisfactorily performed and materials supplied prior to the date of termination in accordance with the Schedule of Prices attached as **Exhibit E** following receipt of an invoice from Operator. If the City terminates this Agreement without cause, the City shall continue to provide Quarterly Projections during

the six-month period following the Notice of Termination and for the quarter immediately following the date of termination. During such six-month period following a Notice of Termination, Operator shall continue to make third party sales, perform the Work, and supply materials to the City in accordance with the Agreement; the City agrees to pay Operator for the Work satisfactorily performed and materials supplied to the City prior to the date of termination and for any finished recycled aggregate remaining in the Recycle Yards on the date of termination up to the total amount specified in the Quarterly Projections for such six-month period and for the quarter following the date of termination. The amount of such payment determined in accordance with the Schedule of Prices attached as **Exhibit E** and shall be made following receipt of an invoice from Operator in accordance with the payment provisions of the Agreement.

C. Upon termination of this Agreement by the City for any reason, Operator shall have no claim of any kind whatsoever against the City by reason of such termination or by reason of any act incidental thereto, except for payment in accordance with paragraph B above. Without limitation, Operator shall not be entitled to loss of anticipated profits or any other consequential damages as a result of any such termination for convenience, and in no event shall the total sums paid exceed the Maximum Contract Amount. No later than 5 business days following the date of termination, Operator shall remove its personal property, including equipment and supplies, and secure the Recycle Yards. Operator shall not remove Airport Materials or Third Party materials or remaining finished recycled aggregate from the Recycle Yards.

Section 24. NOTICES:

Notwithstanding the above, notices concerning termination of this Agreement, notices of alleged or actual violations of the terms of this Agreement, and other notices of similar importance shall be made as follows:

by Operator to: Manager of Aviation
Denver International Airport
8500 Peña Boulevard, 9th Floor
Denver, Colorado 80249-6340

And by City to: John "JJ" Anderson
Recycled Materials Company, Inc.
6425 West Fifty-second Avenue, Suite #1
Arvada, Colorado 80002

Said notices shall be delivered personally during normal business hours to the appropriate office above or by prepaid U.S. certified mail, return receipt requested. Mailed notices shall be deemed effective upon deposit with the U.S. Postal Service. Either party may from time to time designate substitute addresses or persons where and to whom such notices are

to be mailed or delivered, but such substitutions shall not be effective until actual receipt of written notification thereof.

Section 25. RIGHTS AND REMEDIES NOT WAIVED:

In no event shall any payment by the City hereunder constitute or be construed to be a waiver by the City of any breach of covenant or default which may then exist on the part of Operator, and the making of any such payment when any such breach or default shall exist shall not impair or prejudice any right or remedy available to the City with respect to such breach or default; and no assent, expressed or implied, to any breach of any one or more covenants, provisions or conditions of this Agreement shall be deemed or taken to be a waiver of any other breach.

Section 26. NO THIRD PARTY BENEFICIARIES:

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement shall be strictly reserved to the City and Operator, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of the City and Operator that any person other than the City or Operator receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

Section 27. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS:

Operator shall cooperate and comply with the provisions of Executive Order 94 and Attachment A thereto 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 the City's barring Operator from City facilities or participating in City operations.

Section 28. CITY SMOKING POLICY:

Operator and its officers, agents and employees shall cooperate and comply with the provisions of Denver Executive Order No. 99 and the Colorado Indoor Clean Air Act, prohibiting smoking in all City buildings and facilities.

Section 29. GOVERNING LAW; BOND ORDINANCES; VENUE:

A. This Agreement is made under and shall be governed by the law of Colorado. Each and every term, provision or condition herein is subject to the provisions of Colorado law, the Charter of the City and County of Denver, and the ordinances and regulations enacted pursuant thereto.

B. This Agreement is in all respects subject and subordinate to any and all City bond ordinances applicable to the Denver Municipal Airport System and to any other bond ordinances which amend, supplement, or replace such bond ordinances.

C. Venue for any action arising hereunder shall be in the City and County of Denver, Colorado.

Section 30. FEDERAL PROVISIONS:

This Agreement is subject and subordinate to the terms, reservations, restrictions and conditions of any existing or future agreements between the City and the United States, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or Recycle Yards to the City for airport purposes and the expenditure of federal funds for the extension, expansion or development of the Denver Municipal Airport System, including DIA. The provisions of the attached Appendices Nos. 1 and 3 are incorporated herein by reference.

Section 31. CONFLICT OF INTEREST:

Operator agrees that it and its subsidiaries, affiliates, subcontractors, principals, or employees will not engage in any transaction, activity or conduct which would result in a conflict of interest. Operator 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 Operator by placing Operator's own interests, or the interest of any party with whom Operator has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this Agreement if such a conflict exists, after it has given Operator written notice which describes such conflict. Operator shall have thirty days after the notice is received in which to eliminate or cure the conflict of interest in a manner which is acceptable to the City.

Section 32. KEY PERSONNEL ASSIGNMENTS:

A. All key professional personnel identified in **the Scope of Work** will be assigned by Operator or subcontractors to perform Work under this Agreement. Operator shall submit to the Deputy Manager a list of any additional key professional personnel who will perform Work under this Agreement within thirty days after this Agreement has been executed, together with complete resumes and other information describing their ability to perform the tasks assigned. Such additional personnel must be approved in writing by the Deputy Manager. It is the intent of the Parties that all key professional personnel be engaged to perform their specialty for all such services required by this Agreement and that Operator's and the subcontractor's key professional personnel be retained for the life of this Agreement to the extent practicable and to the extent that such services maximize the quality of Work performed. Without limiting the foregoing, Operator will not replace its

key personnel for services under this Agreement, without the written approval of the Deputy Manager.

B. If Operator decides to replace any of its key professional personnel, it shall notify the Deputy Manager in writing of the changes it desires to make. No such replacement shall be made until the replacement is approved in writing by the Deputy Manager, which approval shall not be unreasonably withheld. The Deputy Manager shall respond to Operator's written notice regarding replacement of key professional personnel within fifteen days after the Deputy Manager receives the list of key professional personnel which Operator desires to replace. If the Deputy Manager or his/her designated representative does not respond within that time, the listed personnel shall be deemed to be approved.

C. If, during the term of this Agreement, the Deputy Manager determines that the performance of approved key personnel is not acceptable, he shall notify Operator, and he may give Operator notice of the period of time which the Deputy Manager considers reasonable to correct such performance. If the Deputy Manager notifies Operator that certain of its key personnel should be reassigned, Operator will use its best efforts to obtain adequate substitute personnel within ten days from the date of the Deputy Manager's notice.

Section 33. WAIVER OF CRS 13-20-801, et seq. REGARDING CONSTRUCTION DEFECTS:

Notwithstanding any other provision of this Agreement, the Operator specifically waives all of the provisions of Colorado Revised Statutes §§ 13-20-801 through 807 as they may relate to the Operator's performance under this Agreement.

Section 34. JOINT VENTURE:

If the Operator is a Joint Venture, the partners to the Joint Venture shall be jointly and severally liable to the City for the performance of all duties and obligations of the Operator which are set forth in the Agreement.

Section 35. COORDINATION OF SERVICES:

The Operator agrees to perform its Work under this Agreement in accordance with the operational requirements of DIA, and all Work and movement of personnel or equipment on areas included within the DIA site shall be subject to the regulations and restrictions established by the City or its authorized agents.

Section 36. NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT:

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

B. The Operator certifies that:

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

C. The Operator also agrees and represents that:

- (1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
- (2) It shall not enter into a contract with a sub-consultant or subcontractor that fails to certify to the Operator that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
- (3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in either the E-Verify Program.
- (4) It is prohibited from using either the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and that otherwise requires the Operator to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.
- (5) If it obtains actual knowledge that a sub-consultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such sub-consultant or subcontractor and the City within three (3) days. The Operator will also then terminate such sub-consultant or subcontractor if within three (3) days after such notice the sub-consultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the sub-consultant or subcontractor provides information to establish that the sub-consultant or subcontractor has not knowingly employed or contracted with an illegal alien.

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

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

Section 37. ADMINISTRATIVE HEARING:

Disputes arising under or related to this Agreement or the Work which is the subject of this Agreement shall be resolved by administrative hearing which shall be conducted in accordance with the procedures set forth in D.R.M.C. Section 5-17. The parties agree that the Manager's determination resulting from said administrative hearing shall be final, subject only to Operator's right to appeal the determination under Colorado Rule of Civil Procedure, Rule 106.

Section 38. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:

Contractor 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.

Section 39. PARAGRAPH HEADINGS:

The captions and headings set forth herein are for convenience of reference only, and shall not be construed so as to define or limit the terms and provisions hereof.

Section 40. AGREEMENT AS COMPLETE INTEGRATION; AMENDMENTS:

This Agreement is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other agreement properly executed by the parties. This Agreement and any amendments shall be binding upon the parties, their successors and assigns.

Section 41. CITY EXECUTION OF AGREEMENT:

This Agreement is expressly subject to and shall not be or become effective or binding on the City until it has been fully executed by all signatories of the City and County of Denver.

Section 42. COUNTERPARTS OF THIS AGREEMENT:

This Agreement will be executed in two (2) counterparts, each of which shall be deemed to be an original of this Agreement.

**END OF CONTRACT
SIGNATURE PAGES and EXHIBITS FOLLOW**

Contract Control Number: PLANE-201101390-00

Vendor Name: RECYCLED MATERIAL COMPANY INC

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

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

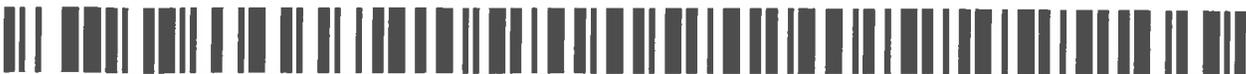
REGISTERED AND COUNTERSIGNED:

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

By _____

By _____

By _____



Contract Control Number: PLANE-201101390-00

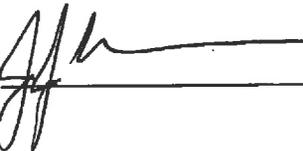
Vendor Name: RECYCLED MATERIAL COMPANY INC

By: 

Name: JASON L. BUESING
(please print)

Title: PRESIDENT
(please print)

ATTEST: [if required]

By: 

Name: JOHN "J.J." ANDERSON
(please print)

Title: RECYCLE CENTER MANAGER
(please print)



Contract Control Number: PLANE-201101390-00

Vendor Name: RECYCLED MATERIAL COMPANY INC

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

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

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

By _____

By _____

By _____



APPENDIX 1

STANDARD FEDERAL ASSURANCES

NOTE: As used below the term "contractor" shall mean and include the "Party of the Second Part," and the term "sponsor" shall mean the "City".

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

1. **Compliance with Regulations.** The contractor shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

2. **Nondiscrimination.** The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

3. **Solicitations for Subcontractors, Including Procurements of Materials and Equipment.** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

4. **Information and Reports.** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the sponsor of the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance.** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the sponsor shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

- a. Withholding of payments to the contractor under the contract until the contractor complies, and/or
- b. Cancellation, termination, or suspension of the contract, in whole or in part.

6. **Incorporation of Provisions.** The contractor shall include the provisions of paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

APPENDIX NO. 3

NONDISCRIMINATION IN AIRPORT EMPLOYMENT OPPORTUNITIES

The Party of the Second Part assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This Provision obligates the Party of the Second Part or its transferee for the period during which Federal assistance is to provide, or is in the form of personal property or real property or an interest herein or structures or improvements thereon. In these cases, this Provision obligates the Party of the Second Part or any transferee for the longer of the following periods: (a) the period during which the property is used by the sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this Provision binds the contractors from the bid solicitation period through the completion of the contract.

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

EXHIBIT A

SCOPE OF WORK FOR THE OPERATION AND MAINTENANCE OF ASPHALT AND CONCRETE RECYCLE FACILITY MANAGEMENT

A. INTRODUCTION

Operator will operate and maintain two sites for the purposes of recycling asphalt and concrete removed from and then reused on projects at DIA. Receipt of asphalt and concrete from and sales to third parties is also allowed as described below.

B. Facility Design/Construction

Aerial photos of the two recycle yards as they generally exist at the time of execution of the Agreement are attached to Exhibit A as Fig. 1-1 and Fig. 1-2. These areas are referred to as the "Recycle Yards". Within ten (10) calendar days of receipt of Notice to Proceed, the Operator is to develop and submit to the Project Manager an engineered yard layout identifying, receiving area(s), sorting and stockpiling area(s), finished product areas, locations of office trailer(s), scale(s), entrance/exit gates, site utilities, crusher, concrete wash out pit, perimeter fence, etc for approval. Operator will provide adequate signage, fencing, lighting, security and safety measures.

Within ten (10) calendar days of receipt of an approved site layout plan and an agreed to price, the Operator will proceed with implementation of the approved layout. Operator will provide Project Manager with a copy of the as-built site layout.

It should be noted that within the north recycle yard is an area approximately 1/3 the size of the overall yard that is reserved for emergency/disaster dog training. The City intends to construct a separate dog training area across 110th from the recycle yard. The Operator may be tasked with assisting the City in this effort.

For any structures and appurtenances that the Operator wishes to install he shall prepare and submit to the Project Manager for approval, a scaled site layout plan that identifies the location of the structure along with detail drawings and/or material information that clearly depicts the item(s) Operator wishes to install

C. General Operation and Maintenance Requirements

Operator will provide all equipment and staff necessary to operate and maintain asphalt and concrete recycle facilities at DIA. This includes but is not limited to; providing secure recycle yards, the inspection an acceptance of recyclable material from DIA and third parties, crushing of material to meet DIA specifications, the ability to market and sell excess product to third parties, and meeting all federal, state and local laws and permit requirements to operate and maintain recycle facilities.

The recyclable materials are stored in a yard at 71st Ave & Jackson Gap St. and in a yard at 110th Ave, west of Queensburg St. Both yards shall be kept secure so the Operator can inspect and monitor the receipt and sales of material. Any contaminated materials accepted by the Operator shall be properly disposed of by the Operator as Generator at a state approved disposal site at no cost to DIA. Operator may accept asphalt or concrete from third parties at their own risk.

All materials will be received and processed for the benefit of DIA. However, to avoid excess accumulation of materials the Operator will be allowed to conduct third party sales subject to sales limitations as specified below.

- Market and sell limited quantities of recycled products as necessary to accommodate fluctuations in DIA material requirements. Third party sales are limited to 45% of total tons of materials produced unless the limitation must be raised to avoid excess accumulation of materials.
- Accept recyclable material from third parties as necessary to meet DIA material requirement demand. The total amount of materials received from third parties cannot exceed 40% of the total tons of material recycled and processed unless the total must be raised to meet DIA requirements.
- DIA has been generating 100,000+/- tons of concrete rubble and 15,000+/- tons of asphalt for the past few years. The quantity of recycled material used has varied considerably, approximately 50-100k ton per year. These numbers are an approximation and DIA does not guarantee the actual quantities of rubble that will be generated or used.

Typical gradations that will be required but not limited to are:

- Class 6 & Class 5 - CDOT Recycled Concrete Base
- Class 6 & Class 5 - CDOT Recycled Asphalt Base
- Class 6 & Class 5 - CDOT Recycled Comingled Base
- Class 1- CDOT Structural Fill
- -2" X ¾" Concrete Dry Screened Rock
- -4" X 2" Concrete Dry Screened Rock
- ASTM (#57/#67) Concrete Dry Screened Rock
- DIA Stone (6" & 12")
- 3/8" Fines
- Custom orders as may be requested

The Operator shall develop and maintain a Quality Control Program that includes identification of testing required for processed materials, protocols and frequency. The QC Program will be submitted to DIA for approval.

The Operator must enumerate and submit a list of equipment that he intends to utilize to carry out and complete the tasks of receiving, crushing and grading of concrete and asphalt materials, and selling of material to DIA or third parties. Operator will keep and maintain on site state certified weigh scales. Scales shall be drive on type, 70'x11' – 100ton computer controlled or equivalent. DIA has a Model 10070-EPR scale, Cardinal Scale Mfg. Co, Webb City, MO available for the Operator to install for his use at either of the two yards. (Fig. 2-1 and Fig. 2-2.)

D. Environmental Requirements

See Exhibit C for the full range of Environmental Controls that are the responsibility of the Operator. The Operator shall inspect and have the ability to detect contaminated materials upon 1) receipt of materials or 2) during handling and prior to processing. Physical and chemical analyses and tests may be required to determine if the material meets the criteria set forth in State of Colorado, CDPHE, Hazardous Materials and Waste Management Division (HMWMD) regulations. The Operator shall pay for such chemical analyses and will coordinate with local authorities to determine the quantity and origin of samples analyzed for any questionable material. The Operator will provide the classification of the material to the City. Regardless of when found contaminated materials shall either 1) not be accepted, or 2) if found after acceptance, have the originator retrieve the contaminated materials or the Operator will be required to dispose of them at a state approved disposal site at no cost to DIA. The Operator will be responsible for the cleanup and proper disposal of contaminated materials to an approved site.

Both recycle yards shall be kept neat and orderly. Clean dirt that accumulates from receipt of recyclable material may be disposed of at existing stockpiles on DIA as directed by DIA's Project Manager. Steel materials embedded in the recycled materials and salvaged shall be sold to metal recyclers when feasible. All waste materials shall be taken to Denver Arapahoe Disposal Site (DADS) as required by Executive Order and described in Exhibit C on an as needed basis.

E. Safety Plan

The Operator will develop and provide two copies of its safety program to the Project Manager for review at least ten days before on site work begins. The Operator's program must meet as a minimum all applicable federal, state and local government requirements.

F. Quarterly Reports

To help facilitate the Operator's crushing operation DIA will provide the Operator a quarterly report identifying how much and what type of material DIA will approximately require in the coming months. This report will include totals for both DIA Maintenance and contractors working for the City and County of Denver at DIA.

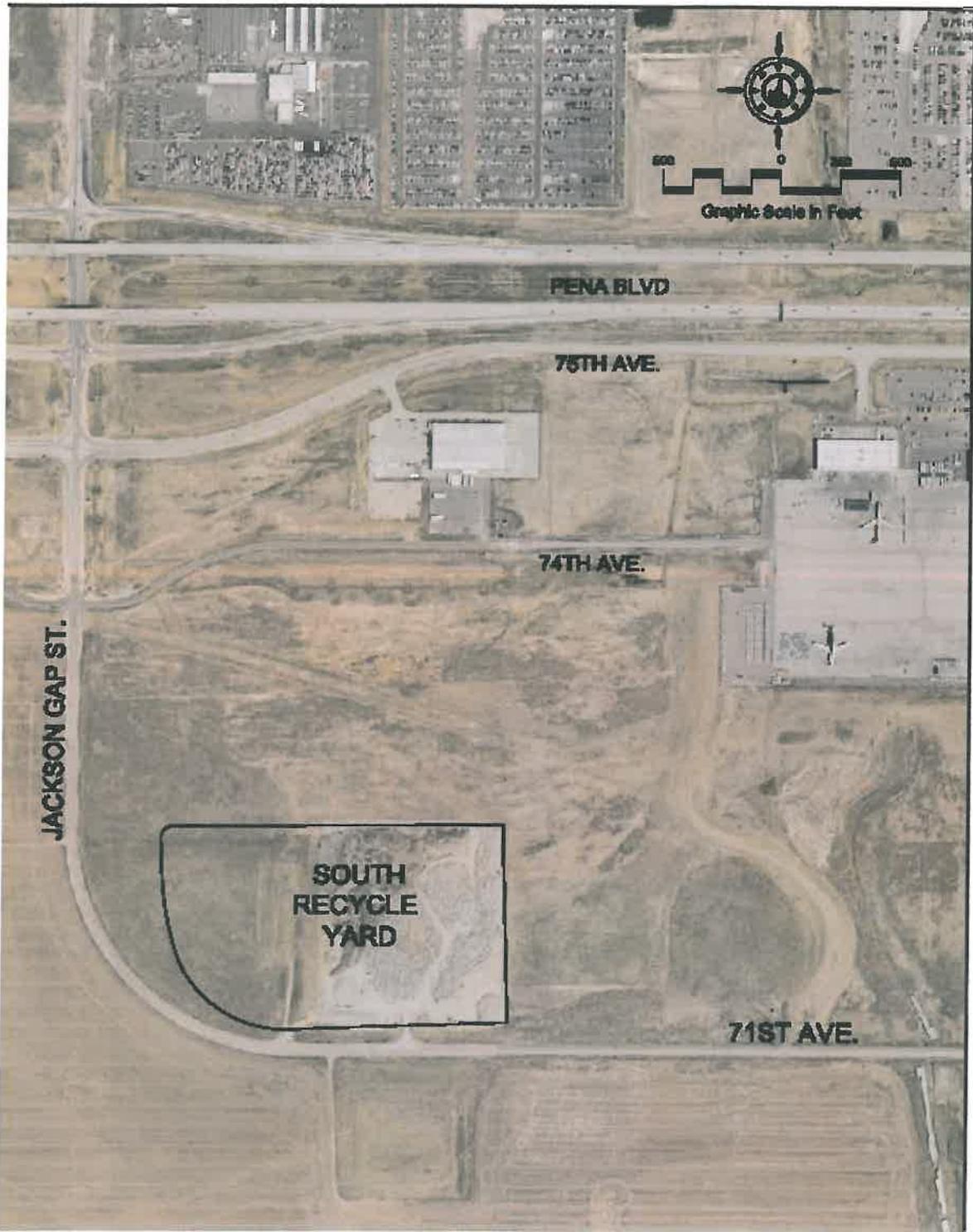


Fig. 1-2

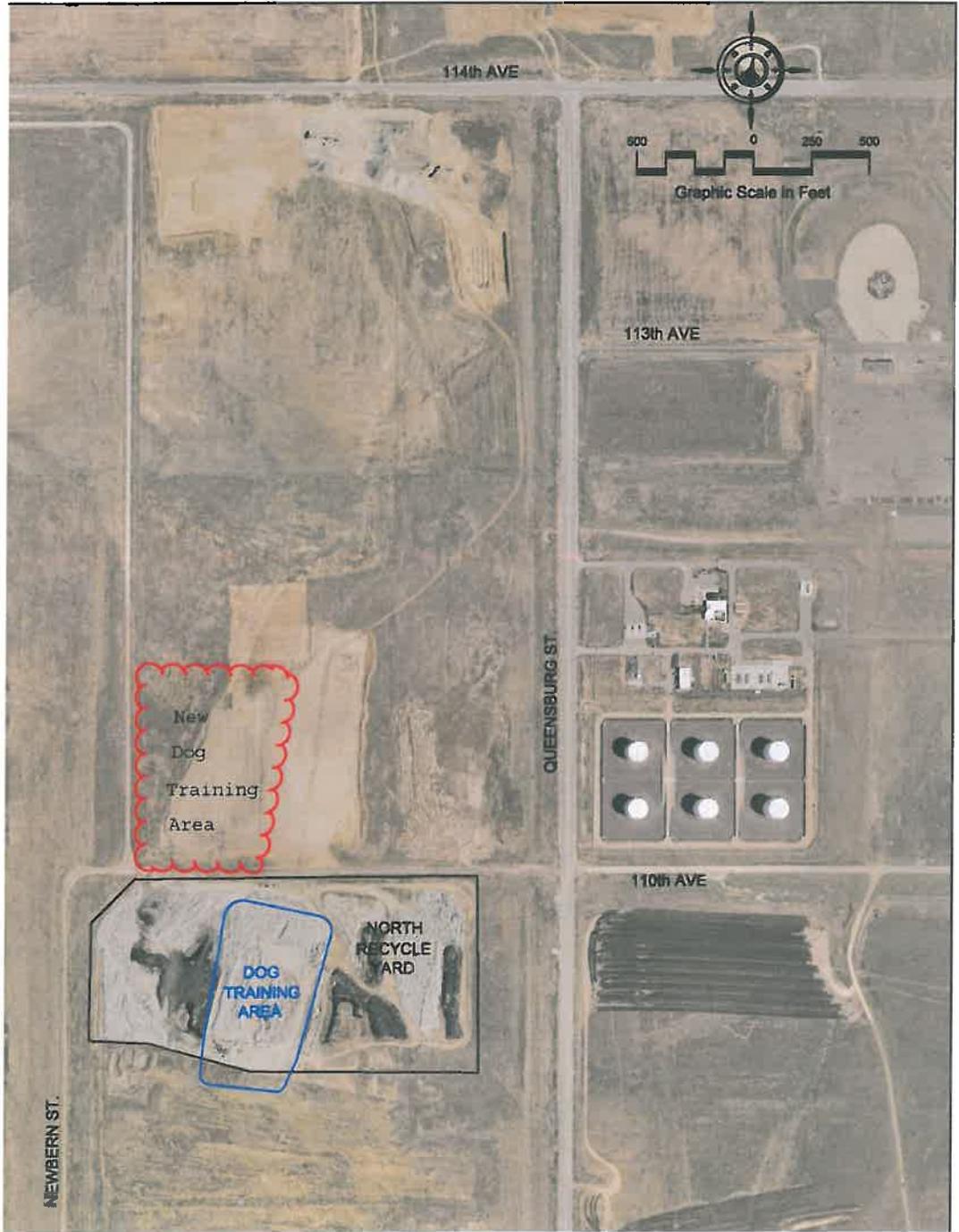


Fig. 1-1

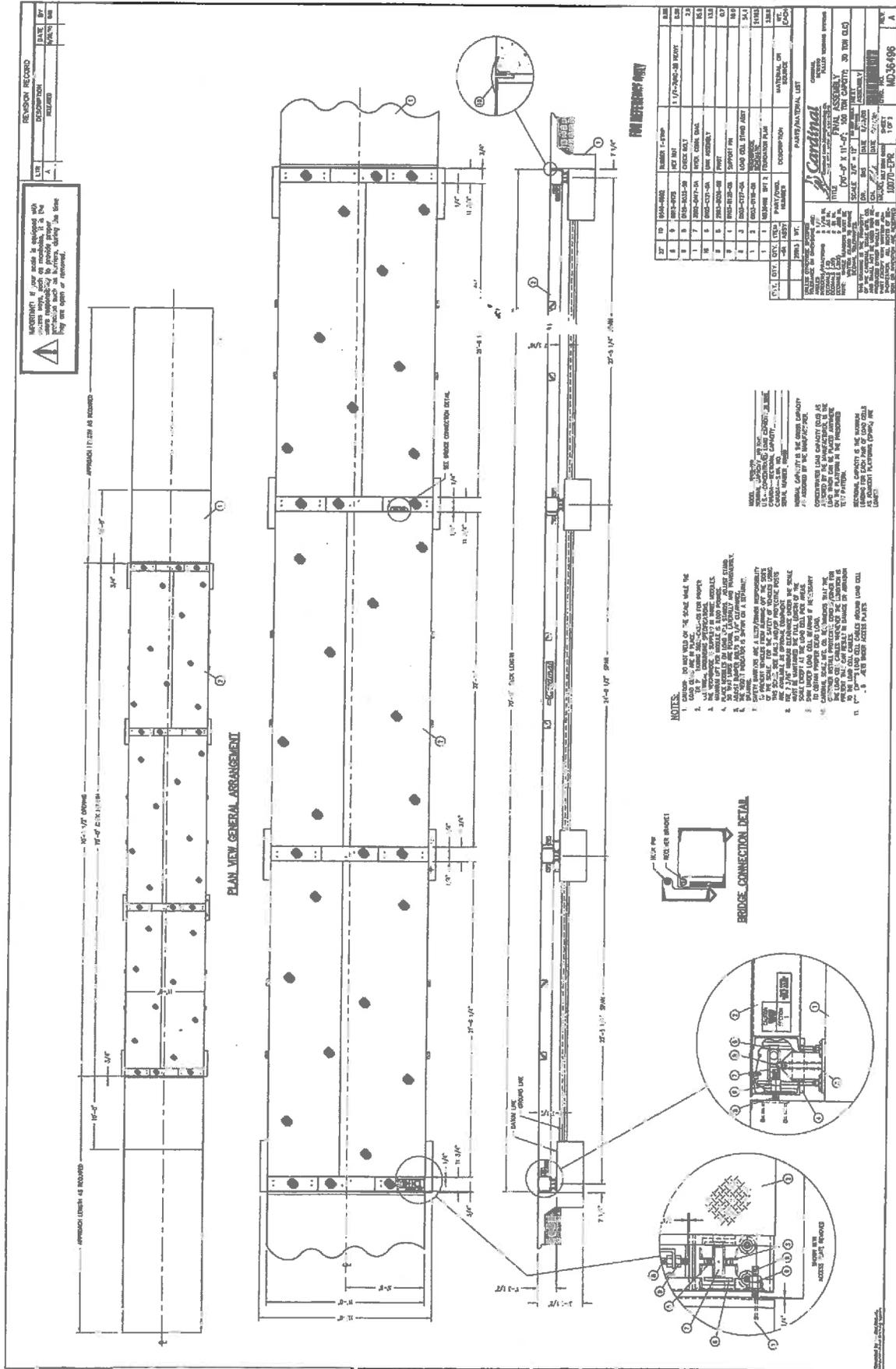
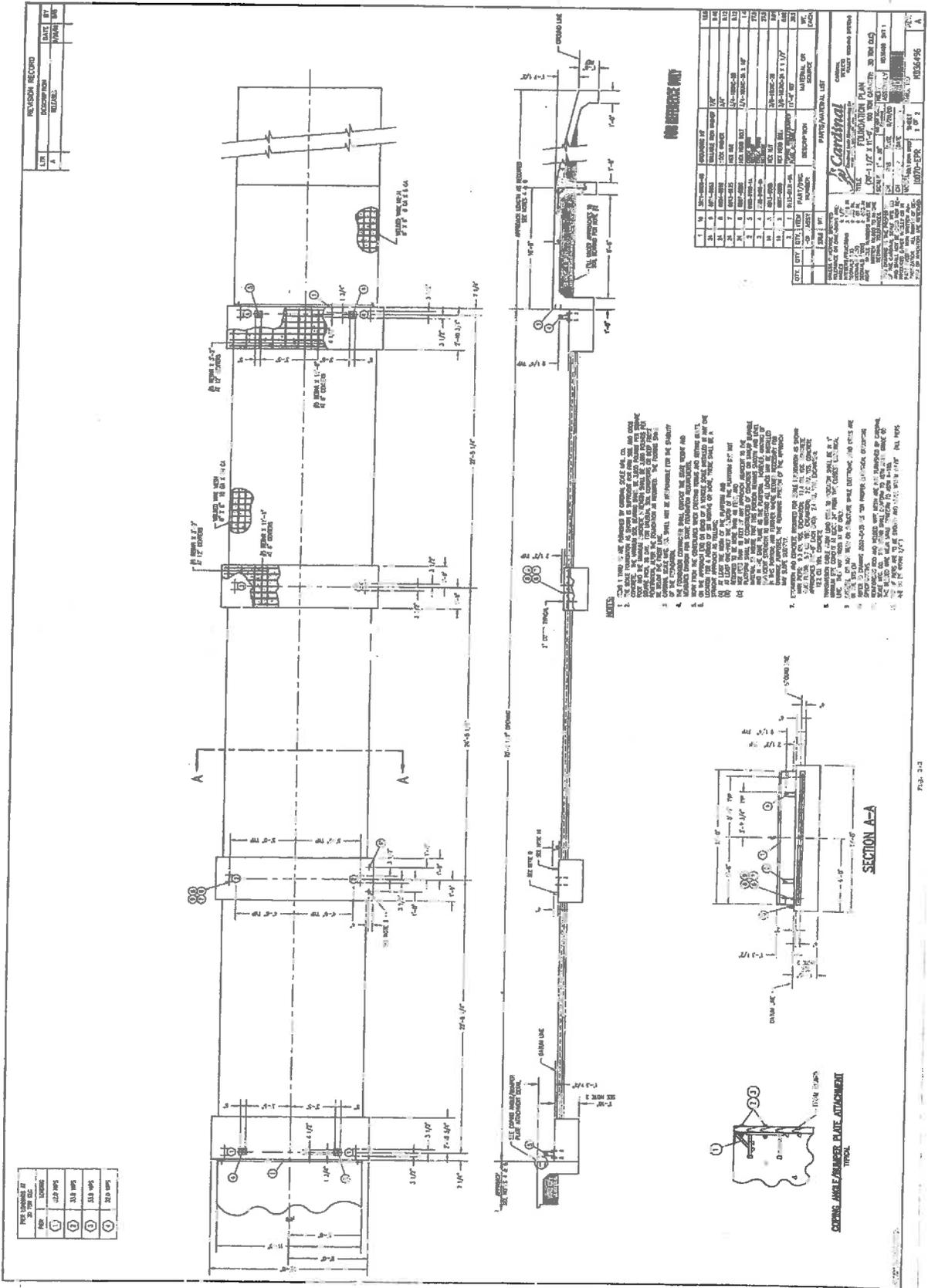


Fig. 2-1



REVISION RECORD	
NO.	DESCRIPTION
1	AS SHOWN

DATE	BY

NO.	DESCRIPTION
1	AS SHOWN

NO.	DESCRIPTION	QUANTITY	UNIT
1	CONCRETE	10.0	CU YD
2	STEEL REINFORCING	100.0	LB
3	FORMWORK	100.0	SQ YD
4	PAINT	10.0	GALES
5	FOUNDATION PLAN	1.0	SET
6	SECTION A-A	1.0	SET

NO. 1000000000

- NOTES:**
1. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
 2. ALL CONCRETE SHALL BE PLACED IN ONE RISE.
 3. ALL REINFORCING SHALL BE WELDED OR LAP JOINTED AS SHOWN.
 4. ALL FORMWORK SHALL BE TRUE TO FACE AND SHALL BE PROTECTED FROM DAMAGE.
 5. ALL SURFACES SHALL BE FINISHED TO THE FINISH GRADE SHOWN.
 6. ALL MATERIALS SHALL BE OF THE BEST QUALITY AVAILABLE.
 7. ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE BUILDING CODES AND SPECIFICATIONS.
 8. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
 9. ALL CONCRETE SHALL BE PLACED IN ONE RISE.
 10. ALL REINFORCING SHALL BE WELDED OR LAP JOINTED AS SHOWN.
 11. ALL FORMWORK SHALL BE TRUE TO FACE AND SHALL BE PROTECTED FROM DAMAGE.
 12. ALL SURFACES SHALL BE FINISHED TO THE FINISH GRADE SHOWN.
 13. ALL MATERIALS SHALL BE OF THE BEST QUALITY AVAILABLE.
 14. ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE BUILDING CODES AND SPECIFICATIONS.

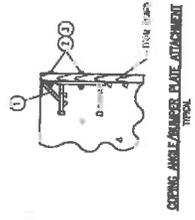
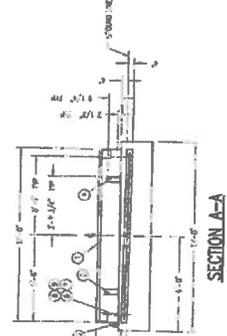


Fig. 2-2

Fig. 2-2

EXHIBIT B

Progress Reporting and Invoicing

INTRODUCTION

This Exhibit "B" describes the Operator's obligation to prepare and submit invoices.

A. General

Operator will maintain clear and concise records of the tonnage of all materials received, sold or removed such that an audit would show a net of zero +/- 2%. Received materials includes all loads of material received and accepted by the Operator. Sold materials includes all materials sold, such as recycled asphalt, concrete and salvaged steel. Removed materials includes material taken to soil stockpiles, trash material taken to DADS and material found to be hazardous and taken to a proper depository. The material weights will be obtained by the use of state certified scales to be installed and maintained on site. Operator's records shall be maintained and available for inspection and review by DIA for a period of three years from conclusion of the contract.

B. Received Material Records

Operator will be required to obtain or fill out a material manifest for every load of material received including weight. Copies of the material manifests plus a monthly summary of all material manifests shall be submitted to DIA's Deputy Manager on a monthly basis. The monthly summary will be sorted by the type of material received and the provider (DIA Maintenance, DIA Contractor, Third Party) Operator will submit an example for review and approval by the Deputy Manager.

Copies of all hazardous material tests performed that exceed Federal, State or Local standards shall be submitted to the Deputy Manager immediately. The Operator will also include a copy of his action plan regarding disposition of the hazardous material. (see also Exhibit C).

C. Sold Material Records

Operator will weigh and retain copies of all weight tickets of all materials sold. Tickets will identify the purchaser of the material, such as DIA Maintenance, project name and/or work order number, Name of Contractor with DIA project name and number or Name of third party. Tickets will also include material type or classification and weight by tons. Tickets to Third Parties will also include the price per ton and total cost per load ticket. Copies of all weight tickets plus a monthly summary of all weight tickets shall be submitted to the Deputy Manager on a monthly basis. The monthly summary will be sorted by type or classification of material and the vendor (DIA Maintenance, DIA Contractor, Third Party). Operator will submit an example for review and approval by the Deputy Manager.

D. Facility Design/Construction

Operator shall provide with the proposed yard layout plan a cost proposal for all elements of work identified in Exhibit A, Facility Design/Construction. The cost proposal shall identify the cost for each element of work and in such detail as described in paragraph F.1 below, for either lump sum or unit price work.

If the maximum cost of an element of Work to be performed has not been agreed upon but the City requires the Operator to proceed without such agreement the City may direct the Operator with such Work on a Time and Material basis as described in paragraph F.3 below.

E. Invoices

Operator will submit an invoice once a month on the date agreed to with DIA's Deputy Manager, in accordance with the Agreement Section 3, Compensation and Payment. The invoice shall include line items for each item of work or material sold to the City (DIA Maintenance/DIA Contractor). The invoice shall show a total tonnage and dollars to date through the end of the year (DIA's budget year, January-December) and the tonnage and dollar amounts for that specific month.

In addition to the invoice the Operator will include the latest partial lien release for payments made to any subcontractors as well as a Contractor's Certification of Payment. The monthly invoice will also include all Received Material and all Sold Material records as described above.

F. Additional Services

If Operator performs Additional Service Requests (ASR) under this Agreement, all adjustments to the Agreement shall be determined by using one of the following methods:

1. A negotiated lump sum. The Operator shall promptly provide itemized and sufficient substantiating data, including calculations, measurements, cost records, production rates, equipment types and capacity, labor costs by craft and other information which the City may reasonably require the Operator to produce in order to permit the City to evaluate any lump sum Additional Service Request. In pricing such proposals, the Operator shall include estimates of the type of costs described in section 3 below.

2. Time and Material costs as determined in the manner described in Section 3 below. These amounts may be reduced where necessary to take into account the cost of Base Agreement Work, Work included in other approved ASRs, idle time for workers and/or equipment when Work could have been performed in other locations or when the number of workers or equipment provided exceeded the number or amount required to perform the Work, unsatisfactory Work, or Work which may be or was performed concurrently with the changed Work and which cannot be easily segregated from the changed Work.

3. Calculation of Time and Material Costs. In no event shall the charge or credit to the City associated with any change exceed the sum of the following:

- a. Direct Labor. The actual net, direct increase or decrease in the cost of the Operator's labor. Such cost shall include only the cost associated with the workers who actually perform the changed Work. The cost of supervision, management and field or office overhead shall not be included or calculated as a direct labor cost. For shop work, the direct labor cost shall include only those workers who work directly on the item being manufactured or the actual operators of the equipment being used to handle the items being manufactured.
- b. Labor Burden. Operator's actual costs for worker's compensation and liability insurance, payroll taxes, social security and employees' fringe benefits (including employer paid health insurance) imposed on the basis of payrolls. This burden must reflect the variability of some burdens, i.e. social security. The burden shall be itemized and include all small

tools and miscellaneous supplies. The total labor burden for such small tools shall not exceed two percent (2%) of the Direct Labor cost.

- c. Direct Material, Supplies, Installed Equipment. The actual net, direct cost of materials, supplies and equipment incorporated into or consumed by the Work. If actual costs are not available, this cost shall be the lowest commercially available price including all discounts and rebates and all applicable taxes. Such cost shall be based on buying the material, supplies and equipment in the largest practical quantity to receive quantity discounts.
- d. Equipment Costs. Without markup or operator, the lesser of (1) the actual net cost to the Operator of owned or rented equipment, other than small tools; or (2) the rental rate for such equipment as determined by using the following method(s);
 - i. Equipment rental rates listed in the appropriate rental rate book currently in use by the Colorado Department of Transportation. If an item of equipment does not appear in the rental rate book currently in use by the Colorado Department of Transportation, the rental rates published by the Associated Equipment Dealers may be used as a basis for negotiating a rental rate for a particular piece of equipment. The Operator shall provide all information necessary to determine the appropriate rental rate at the time the equipment is brought on the job. This shall include, but not be limited to, type, description, make, year, model, series, serial number, fuel type, transmission, wheel combination, GVW, capacity and equipment owner.
 - ii. Rental equipment costs shall be determined using actual invoiced rates, less all discounts for basic equipment rental.
 - iii. Mobilization/demobilization costs will be paid if the equipment is mobilized exclusively for Work described in an Additional Service Authorization. If the equipment is also used on Base Contract Work, no mobilization or demobilization cost will be paid. Mobilization/demobilization costs will be based on using the least expensive means to mobilize or demobilize. Equipment shall be obtained from the nearest available source. When the least expensive methods are used, the costs shown in the actual invoice will be the basis for pricing.
- e. Mark Up For Overhead And Profit.
 - i. The Operator or Subcontractor of any tier who actually performs the Work shall be entitled to a markup of twelve percent (12 %) on the actual costs for items a through d above. Bonds and insurance are compensated at direct cost without markup.
 - ii. A supervising Subcontractor (if any) shall be entitled to a three percent (3%) markup on the actual price charged to the Subcontractor by a Subcontractor of lower tier.
 - iii. The Operator shall be entitled to a three percent (3%) markup on the actual price for the Subcontractor's work.
 - iv. All of the Operator's and Subcontractor's field and office overhead and supervision costs are included in the markups listed above.
 - v. Neither the Operator nor Subcontractor of any tier, nor the City in the case of a credit, will apply or attempt to apply these percentage adjustments in a way which would pyramid either the cost or credit because of the involvement of a Subcontractor or sub-subcontractor. Written justification and approval shall be required for any percentages exceeding a total of fifteen percent (15%).
- f. Bonds, Insurance, Permits And Taxes. The actual increases or decreases in the cost of premiums for bonds and insurance, permit fees, and sales, use or similar taxes related to the Work.

Totals as Equitable Adjustment. The Operator agrees that the total of the above items constitute an equitable adjustment for any and all costs or damages resulting from an Additional Service Authorization.

No Equitable Adjustment for Obstruction by Operator. No equitable adjustment shall be made as a result of costs resulting from any act, hindrance, obstacle, obstruction, interference or omission of the Operator, its Subcontractors, Suppliers, or surety, or any other entity or individual acting on behalf of the Operator.

Price Reductions for Defective Cost or Pricing Data. If it is later determined that pricing adjustments to the Agreement were not correct due to incomplete or inaccurate pricing data by the Operator or any Subcontractor or Supplier or that lower prices were reasonably available, the price shall be reduced accordingly and the Agreement Amount modified by an appropriate Additional Service Authorization.

EXHIBIT C

ENVIRONMENTAL CONTROLS

These provisions are the standard Environmental Controls applicable at DIA. Operator is responsible for complying with all Environmental Controls applicable to its operations at the Recycle Yards

PART 1 - GENERAL

1.01 DESCRIPTION

- A. The Work specified in this Section consists of avoiding or mitigating adverse environmental impacts caused by construction activities in the areas of air quality, water quality, hazardous and non-hazardous solid waste, natural resources, and noise pollution. Reference the General Contract Conditions 806 (Protection of Drainageways), 807 (Protection of Environment), 808 (Hazardous and Explosive Materials or Substances), and 809 (Archeological and Historical Discoveries).
1. The Operator, in conducting any activity on airport property or in conducting work for an airport project not on airport property, shall comply with all applicable airport, local, state, and federal rules, regulations, statutes, laws, and orders ("Environmental Requirements"). In addition, these Environmental Requirements include applicable Environmental Guidelines developed for DIA's Environmental Management System (EMS), as summarized in the airport's Rules and Regulations Part 180 (Environmental Management), which can be located on the airport's website at: <http://www.flydenver.com/diabiz/info/research/rules/index.htm>. Information on DIA's EMS as well as current versions of DIA's Environmental Guidelines and Environmental Policy are also located on the airport's website at: <http://www.flydenver.com/diabiz/community/enviro/index.asp>. These Environmental Requirements address, but are not limited to, requirements regarding the management of hazardous materials, petroleum products, solid waste, or any other substance; the National Environmental Policy Act (NEPA); and water quality and air quality regulations. Each entity, including subcontractors and subconsultants providing products, goods, and/or services on behalf of DIA, must be aware of the DIA Environmental Policy, the significant environmental aspects for DIA, and which of these aspects are relevant to the activities conducted by the entity.
 2. The Operator shall comply with all Environmental Requirements and accept responsibility for compliance with all environmental quality standards, limitations and permit requirements promulgated there under. The Operator shall obtain all environmental permits required for implementation of the project. Failure of these specifications to specifically mention any Environmental Requirement does not relieve the Operator from compliance.
 3. If the City, as owner, is determined by any federal, state or local government agency, department, board or commission, or in any judicial proceeding to have violated any such environmental protection rules, laws or regulations as a result of Operator's acts or omissions, the Operator agrees to indemnify and hold harmless the City from any and all prosecutions, payment of any and all fines or penalties, and the cost of abatement and remediation, except that the Operator shall not be required under General Contract Condition 807, to indemnify the City from any amounts which are attributable to the negligence of the City.
 4. Work shall not commence on any project until all FAA approvals have been received, applicable permits have been issued and signed by permittee, and all inspection requirements have been satisfied in accordance with State and local permitting

requirements.

1.02 SUBMITTALS

- A. Within 10 days after Notice to Proceed, the Operator shall submit the following if applicable, unless waived by the DIA Project Manager:
1. Submittals pertaining to water quality management:
 - a. Copy of the application completed for the City and County of Denver Construction Activities Stormwater Discharge Permit (CASDP) and the CASDP issued for the project by the Denver Department of Public Works. This submittal consists of three items: the Authorization to Discharge, the Sewer Use & Drainage Permit, and the approved Construction Activities Stormwater Management Plan (CASMP).
 - 1) Revisions or amendments to the CASMP by the Operator. At the completion of the project, after final stabilization has been achieved and accepted in accordance with CASDP requirements, the Operator shall submit a copy of the CASDP Inactivation Request.
 - b. Copy of the certification issued by the Colorado Department of Public Health and Environment (CDPHE) Water Quality Control Division (WQCD) under the Colorado Discharge Permit System (CDPS) for discharges associated with construction activities and/or industrial activities. Before obtaining this permit, the Operator shall submit a **draft** permit application and the final permit application for DIA review and approval PRIOR to submittal to CDPHE. The Operator need not submit copies of the general permits or the general permit rationales.
 - 1) At the completion of the project, after final stabilization has been achieved and accepted in accordance with the State of Colorado CDPS requirements, the Operator shall submit a copy of the CDPS Inactivation Notice or Notice of Termination.
 - c. Copy of the certification issued by the State of Colorado CDPS under its General Permit for Construction Dewatering Activities. Before obtaining this permit, the Operator shall submit a **draft** permit application and the final permit application for DIA review and approval PRIOR to submittal to CDPHE. The Operator need not submit a copy of the general permit or the general permit rationale.
 - 1) At the completion of the project, the Operator shall submit a copy of the CDPS Notice of Termination.
 - d. Copies of any certification issued by the State of Colorado under its Industrial Permitting for minimal discharges of process wastewater. Before obtaining a permit, the Operator shall submit a **draft** permit application and the final permit application for DIA review and approval PRIOR to submittal to CDPHE. The Operator need not submit a copy of the issued permit or the permit rationale.
 - 1) The Contractor shall submit copies of Discharge Monitoring Reports (DMRs) and at completion of the project, the CDPS Notice of Termination.
 - e. A copy of the well permit from the state Division of Water Resources for every new well that diverts or for the monitoring of groundwater.
 - f. A copy of the Notice of Intent for any borehole structure filed with the state Division of Water Resources.
 2. Submittals pertaining to sewage holding tanks associated with buildings and trailers. For purposes of this section, the generic term "sewage holding tank" means "individual sewage disposal system (ISDS)", "privy vault", "septic tank", or "septic system".
 - a. Copy of the permit application for a sewage holding tank.
 - b. Copy of the Sewer Use & Drainage Permit issued by the Denver Department of Public Works.
 - c. Copy of the ISDS permit issued by the Denver Department of Environmental Health.

3. Submittals pertaining to air quality management:
 - a. Copy of any permit issued by the CDPHE Air Pollution Control Division (APCD). Before obtaining a permit, the Contractor shall submit a **draft** permit application and the final permit application for DIA review and approval PRIOR to submittal to CDPHE.
 1. In cases where the City has already obtained a dust control permit, the Operator shall submit a copy of the paperwork transferring the permit over to the Operator's company name and a copy of the transferred permit.
 - b. Dust control plan. For projects where the State of Colorado requires a dust control permit, this submittal is waived. This plan must address appropriate control measures that the Operator will employ to minimize the release of fugitive dust from the site. In addition, the Operator must comply with the requirements in Section 3.01 below.
 - c. Copies of the Notices of Relocation.
4. Submittals pertaining to storage tanks and containers:
 - a. Copy of the permit issued by the State of Colorado, Department of Labor and Employment, Division of Oil and Public Safety, for installation of petroleum (or other regulated substances) storage tanks located on airport property and used for the project.
 - b. Copy of permits issued by the Denver Fire Department for storage tank installations, storage tank removals, and hazardous materials use/storage.
 - c. Copy of Spill Prevention, Control, and Countermeasure (SPCC) Plan for petroleum storage tanks and containers with capacity of 55 gallons of oil or greater located on airport property and used for the project.
5. Waste Management Plan. This submittal may be waived if DIA Environmental Services, upon consultation with the DIA Project Manager, deems it unnecessary to require such plan. When required, this plan must include, at a minimum, waste management measures listed in Paragraph 3.05.I. below. Because this plan may be required at any point during the project, the Operator should anticipate making this submittal in its contract bid or proposal.
6. Copies of any other plans, permits, permit applications, correspondence with regulatory agencies (including violations), waste manifests, results of laboratory analyses, or other environmental documentation required for the project not previously identified.

1.03 RELATED DOCUMENTS

- A. Code of Federal Regulations (CFR) Publications (including but not limited to):
 1. 33 CFR 323 - Permits for discharges of dredged or fill materials into waters of the United States
 2. 40 CFR - Protection of Environment
 3. 49 CFR 171-180 Hazardous Material Transportation Regulations
- B. Colorado Revised Statutes (including but not limited to):
 1. Water Quality Control, Title 25, Article 8
 2. Air Quality Control, Title 25, Article 7
 3. Hazardous Waste, Title 25, Article 15

4. Noise Abatement, Title 25, Article 12
 5. Petroleum Storage Tanks, Title 8, Article 20.5
 6. Liquefied Petroleum Gas (LPG) Storage Tanks, Title 8, Article 20
 7. Solid waste regulations
- C. City and County of Denver Executive Orders (including but not limited to)
1. Executive Order No. 115
 2. Executive Order No. 123
- D. Denver Revised Municipal Code, Title II, Sections 48-44 and 48-93
- E. City and County of Denver Construction Sites Program
- F. City and County of Denver Construction Activities Stormwater Management Plans Information Guide
- G. Any other applicable rules, regulations, ordinances, and guidance must be followed as applicable.

PART 2 - PRODUCTS

2.01 PRODUCTS

- A. Products required for the work shall meet all Environmental Requirements.
- B. At a minimum, products for erosion and sediment control must conform to the technical requirements contained in the City and County of Denver's Construction Activities Stormwater Management Plan Information Guide and the current version of the Urban Drainage and Flood Control District's Urban Storm Drainage Criteria Manual, Volume 3: Best Management Practices. These documents are posted at <http://www.denvergov.org/Portals/528/documents/DftGuide452007.pdf> and http://www.udfcd.org/downloads/down_critmanual.htm respectively.

PART 3 - EXECUTION

3.01 AIR POLLUTION CONTROLS

- A. The Operator shall use appropriate control measures to comply with applicable air quality permit requirements. Additionally, the Operator must be aware of the following procedures and techniques while conducting construction activities on DIA property. NOTE: Application of dust control measures should be discussed in the Dust Control Plan.
1. Apply water as needed to the recycle yard roads, disturbed surface areas and public access roads as needed to suppress dust. The use of chemical stabilizer can be requested by the Operator. The type of stabilizer to be used and locations of use must be included in the Dust Control Plan, which must be approved by the DIA PM prior to application.
 2. The Operator shall suspend all dust generating activities if wind speed exceeds 30 mph and the Dust Control Plan is not working. For purposes of this section, the generic term "dust generating" means crushing and hauling. Operators are expected to check wind speeds with the airport's ramp tower to demonstrate compliance with this requirement.

In addition, the project may be shut down if two of three of the Runway Visual Range (RVR) instruments read visibility of 2,400 feet or less. The instruments are used by FAA Control Tower personnel to ensure safe aircraft operations. Costs for shutdowns due to wind velocities or RVR readings shall not be grounds for delay or extra cost claims.

- B. Burning of materials is strictly prohibited on DIA property.

3.02 WATER POLLUTION CONTROLS

- A. The Operator shall conduct construction activities in accordance with all applicable permit requirements. In addition, the Operator shall comply with the following procedures and requirements while conducting activities on DIA property.
 - 1. Water encountered during operations cannot be discharged to the stormwater system or placed onto the ground surface without a permit AND prior written approval by the DIA Project Manager. If groundwater or stormwater is anticipated to be encountered and the Operator desires to discharge it to the stormwater system or onto the ground surface, then the Operator must obtain an appropriate CDPS discharge permit in advance of the discharge unless this activity is specifically authorized under the CDPS Construction Stormwater Permit.
 - 2. If water is encountered and the Operator desires to discharge these waters to the sanitary sewer system, then the Operator must obtain approval from DIA Environmental Services in advance of the discharge.
 - 3. The Operator shall ensure that stormwater that comes in contact with storage areas does not become impacted and discharged to the stormwater sewer system or to an impervious surface. Furthermore, any materials in storage areas shall not be stored directly on the ground to avoid cathodic damage to containers. Any storage containers/tanks in direct contact with the soil shall be protected by an engineered cathodic protection system.
 - 4. The Operator shall not operate any valves, sluice gates or other drainage appurtenances related to any DIA sewer system without the prior approval of both the DIA Project Manager and DIA Environmental Services. Any violation of this directive may result in the payment of a financial penalty by the Operator if the State of Colorado assesses such a penalty.

3.03 EROSION CONTROL AND SEDIMENTATION CONTROL

- A. This work consists of constructing, installing, maintaining and removing, if required, temporary and permanent control measures during the life of the contract (and possibly afterward) until the Operator achieves final stabilization of the site to prevent or minimize erosion, sedimentation, and pollution of any state waters in accordance with all Environmental Requirements.
- B. The Operator is responsible for compliance with all requirements in accordance with the CASDP, the City and County of Denver Construction Sites Program, the approved CASMP, and CDPS issued permits.
- C. Clean soil fill may be stockpiled in any area that has been previously approved and signed off by the DIA Section Directors of Construction, Design and Planning, and Environmental Services. Soil stockpiles are considered a potential pollutant source and must be addressed in the CASMP and/or SWMP.

- D. Make immediately available, upon the DIA PM's request, all labor, material and equipment judged appropriate by the Project Manager to maintain suitable erosion and sediment control features. These actions requested by the DIA PM take precedence over all other aspects of project construction that have need of the same labor, material and equipment, except those aspects required to prevent loss of life or severe property damage.

3.04 CONSTRUCTION OF CONTROL MEASURES FOR EROSION AND SEDIMENTATION

- A. The Operator must install control measures in accordance with the most recent version of the Urban Drainage and Flood Control District's Urban Storm Drainage Criteria Manual, Volume 3: Best Management Practices and the City and County of Denver's Construction Activities Stormwater Management Plan information Guide. These documents are posted at: http://www.udfcd.org/downloads/down_critmanual.htm and <http://www.denvergov.org/Portals/528/documents/DftGuide452007.pdf> respectively. Deviations from these two documents are allowed with written consent from the City and County of Denver NPDES Inspector.

3.05 SOLID WASTE MANAGEMENT

- A. This paragraph applies to solid waste. Solid waste is defined at 40 CFR 261.2 and includes all putrescible and nonputrescible solid, semisolid and liquid wastes, but does not include hazardous waste which is treated as a separate subset of solid waste. Hazardous waste is defined at 40 CFR 261.3, and 6 CCR 1007-2 as a solid, a liquid, or a contained gaseous material that is no longer used or that no longer serves the purpose for which it was produced and meets the definitions of the regulations. Certain types of non-hazardous solid waste may require special handling; such wastes are sometimes called "special waste."
- B. Hazardous and non-hazardous solid waste may be generated by the actions of the Operator including, but not limited to, the direct purchase of hazardous materials, demolition, site preparation, grading, excavation, construction, or maintenance of equipment. If questionable material is encountered during operating activities, the Operator must immediately notify the DIA Communications Center at (303) 342-4200 and the DIA Project Manager. If the Operator will utilize any chemicals that will result in the generation of a potentially hazardous waste, the Operator must prepare and submit a Waste Management Plan (Section 3.05.1)
- C. Remove scrap and waste material and dispose of it in accordance with laws, codes, regulations, ordinances, and permits.
- D. The Operator is responsible for the safe management and disposal of all hazardous and non-hazardous solid waste and shall dispose of such waste in accordance with all environmental requirements. Waste disposal options include reuse on the project (with DIA approval only), sale, use for fuel, donation to other public or private projects, or through disposal in approved public or private disposal sites, either free of charge or for a fee. The method of disposal is restricted according to the classification of the waste. Hazardous and non-hazardous solid waste shall not be abandoned, dumped, buried or in any other way disposed on DIA property.
- E. City and County of Denver Executive Order No. 115 requires all non-hazardous solid waste generated at DIA to be directed to the Denver Arapahoe Disposal Site (DADS) landfill. This includes all non-hazardous solid waste collected or transported in Denver vehicles, Operator vehicles, or subcontractor vehicles. The Operator shall establish an account, through the Project Manager in advance for the disposal of non-hazardous solid waste generated on the project; the Operator is responsible for contracting waste hauling services. Therefore, this proposal shall include costs for transportation to the DADS landfill only and the City is responsible for disposal fees and any applicable State surcharges. The Operator is responsible for any special handling charge imposed by the transporter or the DADS landfill operator.

1. In the interest of public relations and to maximize the long-term use of the Site, haul routes adjacent to DADS shall be limited to State Highways 30 or 470 unless these routes are impassable (refer to Figure A for preferred haul route). Specifically, Gun Club Road between Interstate Highway 70 ("I-70") and Mississippi Avenue shall be avoided.
- F. Some of the naturally occurring material found on site by the Operator, especially tar or oil-impregnated soil, may not be obviously hazardous. Physical and chemical analyses and tests may be required to determine if the material meets the criteria set forth in State of Colorado, CDPHE, Hazardous Materials and Waste Management Division (HMWMD) regulations. The Operator shall pay for such chemical analyses and will coordinate with local authorities to determine the quantity and origin of samples analyzed for any questionable material. The Operator will provide the classification of the material to the City.
- G. The routes to be followed when transporting solid or hazardous wastes may be subject to the approval of the local agency having jurisdiction.
- H. The Operator shall not wash down equipment in such a manner as to flush grease and oils into the project site or onto airport property unless the waste is properly contained, treated, and disposed.
- I. Unless waived, the Operator shall submit a Waste Management Plan that meets these minimum requirements:
1. Operator's name and contract number;
 2. A list of all materials, products, and wastes for the project; acknowledgment whether any of those materials and products require special handling or storage for environmental, safety, or fire code reasons; and acknowledgment whether any of the wastes will become regulated wastes upon disposal. The list of materials, products, and wastes shall include, at a minimum, trash and unclassified construction debris, asphalt spoils, concrete spoils, pavement sweepings, soils contaminated by chemicals or petroleum products during the project, lime and cement trimmings, scrap metal, and every chemical product used on the project. Reuse of a product on site for its original intended purpose (e.g., cement trimmings from one part of the project used elsewhere on the airport) does not constitute generation of a waste for disposal.
 3. For each material and product listed, the Operator shall identify the storage method, and identify measures to store hazardous waste separately from non-hazardous waste.
 4. For each waste listed, the Operator shall identify the handling/transportation method, the disposal method, and the disposal facility utilized.
 5. If the Operator anticipates generation of hazardous waste, the Operator shall provide its USEPA (generator) identification number.
 6. Recycling measures.
 7. Waste minimization measures.
 8. Pollution prevention measures.
 9. Training measures for management of hazardous materials and hazardous wastes on site.
- J. The Operator shall maintain copies of MSDSs for any and all materials used at the airport project, at its on-site project office or other designated location. DIA Environmental Services may, at any time, request copies of MSDSs and/or waste manifests for any waste shipments from the project site. Any such request must be fulfilled within 1 business day.

- K. The Operator shall not accept any shipment of hazardous material to the worksite. If by chance the Operator accepts material found to be hazardous, the Operator shall immediately inform the DIA PM and DIA Environmental Services and provide them with the following information; any special handling, storage, or disposal requirements; what type of material it is; what hazard(s) it poses; how to treat exposure(s); and the quantity of hazardous material in the shipment.
- L. Before leaving the site with any hazardous waste or material requiring special handling, disposal, or storage, the Operator must provide the DIA PM with a detailed description of the material, its source, quantity, who is hauling it off site, and where it is being taken, along with verification that the destination site can legally receive it.
- M. The Operator shall recycle all construction materials to the extent practicable.

3.06 CONSTRUCTION DEBRIS RECYCLING

- A. The City and County of Denver encourages recycling applicable materials.
- B. Dry concrete and asphalt materials are considered solid waste, but may be eligible for recycling. The acceptance of materials at the two recycle yards will be the responsibility of the Operator.
 - 1. Concrete washout activities are prohibited anywhere on DIA property unless a) the activity is specifically authorized under a CDPS permit and included in the SWMP or b) the wash water is collected and hauled offsite for disposal at an appropriately permitted facility. Concrete washout activities authorized by permit are only allowed at a designated concrete washout area as indicated in the approved CASMP and include the washing of the chute and tools ONLY. Concrete washout spoils are eligible for recycling once the washout has been segregated and allowed to dry and harden in accordance with permitted methods.
 - 2. Rejected loads and/or other wet concrete or asphalt materials are prohibited to be placed ANY WHERE on DIA property unless the contractor holds a permit that authorizes the placement of such material on the site. Unless specifically authorized in a CDPS permit issued to the contractor, these materials must be returned to the facility of origination or other permitted facility for proper disposal. It is expected that the Operator of the two recycle yards will be properly permitted to accept wet loads of concrete or asphalt.
 - 3. A Recycle Materials Manifest is required to be filled out for each load of concrete or asphalt accepted in the two recycle yards. It will be the responsibility of the Operator to ensure the accuracy and completeness of the manifests.
 - 4. A copy of all manifests must be submitted on a monthly basis to the DIA Project Manager. A copy of the Recycled Materials Manifest form is available from the DIA Project Manager.

NOTE: Concrete and asphalt waste materials are considered a potential pollutant source and must be addressed in the CASMP and/or SWMP.

3.07 STORAGE OF OIL, FUELS, OR HAZARDOUS SUBSTANCES

- A. The Operator shall prevent oil or other hazardous substances (as defined in federal and state regulations) from entering the ground, drainage or local bodies of water, and shall provide containment, diversionary structures, or equipment to prevent discharged oil from reaching a watercourse and take immediate action to contain and clean up any spill of oily substances, petroleum products, or hazardous substances. The Operator shall provide one or more of the following preventive systems at each petroleum storage site:

1. Dikes, berms, or retaining walls capable of containing at least 100% of the volume of the largest single tank and equipped with sufficient freeboard to contain precipitation events. The secondary containment must be "sufficiently impermeable" to prevent a release to the environment.
 2. Culverting, curbing, guttering or other similar structures capable of containing at least 100% of the volume of the largest single tank.
- B. The provision of such preventive systems shall be subject to acceptance by the DIA PM prior to tank installation and shall follow the SPCC regulations (40 CFR Part 112).
- C. Prior to bringing any containers of 55-gallon or above capacity onto DIA property for storage of oil, fuel, or other petroleum substances, the Operator may be required to prepare an SPCC Plan that conforms to 40 CFR Part 112. The plan must include either a certification from a Professional Engineer or self-certification (if applicable), as well as management approval from the legally responsible Operator representative.

3.08 SPILL RESPONSE AND NOTIFICATION

- A. The Operator is responsible for all spills that may result from its activities. For ANY suspected or confirmed release or spill of oil, fuel, solid waste, hazardous waste, unknown materials, lavatory waste, or miscellaneous chemicals, etc. that occurs as the result of the Operator's activities on DIA property, the Operator is required to take immediate action to mitigate the release or spill and report it to the DIA Project Manager and to the DIA Communications Center at (303) 342-4200.
- B. The Operator is responsible for notifying the appropriate regulatory agency(ies) in the event suspected and/or confirmed releases are identified, in accordance with regulatory requirements.

3.09 SITE REMEDIATION AND RESTORATION

- A. The Operator shall be required to perform any necessary site assessment and remediation activities required by applicable regulatory agency(ies) during operation of the recycle yards and/or at the end of the contract upon leaving the site but before receipt of Final Payment.
- B. During routine site activities, the Operator is required to manage soils using typical construction techniques. The Operator must differentiate between soils and wastes (including contaminated soils versus clean soils) and determine those materials that can remain on DIA property and those that must be transported offsite for disposal.
- C. During all activities that require the management of soils, the Operator must notify the DIA Project Manager and DIA Environmental Services (ES) that soils being managed may have been impacted by industrial activities conducted at the airport. "Process knowledge" pertaining to previous use may be used to determine whether impacted soils are probable. Also, common indices such as soil staining and odor can be used as a determination for the probable condition. If probable contamination conditions are suspected, the Operator will notify the DIA Project Manager and DIA ES immediately. At that time (which may be before the work is initiated where indicative conditions exist), all work will cease until a sampling and analysis approach is determined and implemented by the proper responder.
- D. If the site conditions warrant based on evidence of spillage or contamination, process knowledge, and/or visual or olfactory observations, the Operator may be required to conduct sampling and analysis to confirm that no remedial action is required. Prior to conducting any removal activities, the Operator must provide a Scope of Work to the DIA PM describing the proposed site assessment activities.

- E. The impacted project will modify its operation to include a segregation area where probable impacted soils can be placed, stored, and sampled for characterization. Should the soil materials be determined to exceed the applicable standards, the DIA Project Manager in conjunction with DIA ES, will be responsible for the proper disposal of these materials. Materials that are determined to contain contamination levels below the applicable standards can be considered clean soils and reused on DIA property.

- F. The Operator shall restore any area on the Airport which becomes contaminated as a result of its operations. Restoration shall be either to applicable standards under federal and state law or to such other levels as may be required by the Manager of Aviation, at the Manager's sole discretion. Such restoration shall be completed at the earliest possible time, and the Operator's restoration shall be subject to inspection and approval by the Manager of Aviation or her duly authorized representative (see DIA Rules & Regulations – Part 180).

PART 4 - MEASUREMENT

4.01 METHOD OF MEASUREMENT

- A. No separate measurement shall be made for work under this Section.

PART 5 - PAYMENT

5.01 METHOD OF PAYMENT

- A. Any costs affiliated with the initial site setup can be included in the Facility Design/Construction costs with appropriate supporting backup. Ongoing maintenance, inspections, permit renewals, etc will not be paid for separately but shall be included in unit price items of work. The Operator shall be responsible for payment of all fees associated with review of environmental permit applications, processing of environmental permits and required inspections.

EXHIBIT D

PLEASE GIVE THIS FORM TO YOUR INSURANCE AGENT FOR COMPLETION. THIS IS THE ONLY CERTIFICATE FORM THAT WILL BE ACCEPTED BY THE CITY AND COUNTY OF DENVER.

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

Original COI

Advice of Renewal

Change

Party to Whom this Certificate is Issued:

Name and Address of Insured:

CITY AND COUNTY OF DENVER
Manager of Aviation
Denver International Airport
8500 Peña Boulevard, Room 8810
Denver CO 80249

CONTRACT NAME & NUMBER TO WHICH THIS INSURANCE APPLIES: CE 0A004 Asphalt and Concrete Recycling Facility Management at DIA

I. MANDATORY COVERAGE

WC-1 Colorado Workers' Compensation and Employer Liability Coverage

Coverage	Minimum Limits of Liability (In Thousands)	Policy No. & Company	Policy Period
COLORADO Workers' Compensation and Employer's Liability	WC Limits: \$100, \$500, \$100 Limits:		

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

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

CGL-1 Commercial General Liability Coverage

Coverage	Minimum Limits of Liability (In Thousands)	Policy No. & Company	Policy Period
Commercial General Liability (coverage at least as broad as that provided by ISO form CG0001 or equivalent)	Each Occurrence: \$1,000 General Aggregate Limit: \$2,000 Products-Completed Operations Aggregate Limit: \$2,000 Personal & Advertising Injury: \$1,000 Fire Damage Legal - Any one fire 1,000		

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

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

BAL-1. Business Automobile Liability Coverage

Coverage	Minimum Limits of Liability (In Thousands)	Policy No. & Company	Policy Period

Business Automobile Liability (coverage at least as broad as ISO form CA 0001)	Combined Single Limit	\$1,000		
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Any Policy issued under this section must contain, include or provide for the following:

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

II. ADDITIONAL COVERAGE

UL-1 Umbrella Liability

Coverage	Minimum Limits of Liability (In Thousands)	Policy No. & Company	Policy Period
Umbrella Liability <input checked="" type="checkbox"/> Non-restricted area access	Each occurrence and aggregate \$1,000		
<input type="checkbox"/> Unescorted airside access	Each occurrence and aggregate \$9,000		

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

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

III. ADDITIONAL CONDITIONS

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

1. All coverage provided herein shall be primary and any insurance maintained by the City shall be considered excess.
2. With the exception of professional liability and auto liability, a Waiver of Subrogation and Rights of Recovery against the City, its officers, officials and employees is required for each coverage period.
3. The City shall have the right to verify or confirm, at any time, all coverage, information or representations contained herein, and the insured and its undersigned agent shall promptly and fully cooperate in any such audit the City may elect to undertake.
4. Advice of renewal is required
5. All insurance companies issuing policies hereunder must carry at least an A-VI rating from A.M. Best Company or obtain a written waiver of this requirement from the City's Risk Administrator.
6. Compliance with coverage requirement by equivalent herein must be approved in writing by the City's Risk Administrator prior to contract execution.
7. No changes, modifications or interlineations on this Certificate of Insurance shall be allowed without the review and approval of the Risk Administrator prior to contract execution.

IV. NOTICE OF CANCELLATION

It is understood and agreed that should any Policy issued hereunder be cancelled or non-renewed before the expiration date thereof, the issuing company or its authorized Agent shall mail to the address shown above, by mail, return receipt requested, thirty (30) days prior written notice ten (10) days for non-payment of premium, referencing the contract/project number set forth herein.

EXHIBIT E

Schedule of Prices (2011)

DIA Projects & Maintenance: (Excludes Applicable Taxes and Fees)

Incoming Recyclable Rubble:

Pre-Break, Size, Clean & Stockpile	With Prevailing Wages	Without Prevailing Wages
Weigh & Inspect Incoming Rubble	\$ 0.46 per Ton	\$ 0.42 per Ton
< 24" Rubble Size	\$ 2.20 per Ton	\$ 2.00 per Ton
>24" Rubble Size	\$ 5.75 per Ton	\$ 5.30 per Ton
Structural Reinforced Rubble	\$ 13.30 per Ton	\$ 12.25 per Ton
Reinforced Concrete Pipe	\$ 8.95 per Lin. Ft.	\$ 8.25 per Lin. Ft.

Outgoing Recycled Material:

Class 6-CDOT Recycled Concrete Base	\$ 5.20 per Ton	\$ 4.75 per Ton
Class 6-CDOT Recycled Asphalt Base	\$ 5.10 per Ton	\$ 4.70 per Ton
Class 5 – CDOT Recycled Concrete Base	\$ 5.20 per Ton	\$ 4.75 per Ton
Class 5 – CDOT Recycled Asphalt Base	\$ 5.10 per Ton	\$ 4.70 per Ton
Class 1 – CDOT Structural Fill	\$ 4.46 per Ton	\$ 4.10 per Ton
-2" X ¾" Concrete Dry Screened Stone	\$11.50 per Ton	\$ 10.55 per Ton
-4 X 2" Concrete Dry Screened Stone	\$ 10.55 per Ton	\$ 9.70 per Ton
ASTM (57#/67#) Concrete Dry Screened	\$ 15.20 per Ton	\$ 13.95 per Ton
DIA Stone (6" & 12")	\$ 16.10 per Ton	\$ 14.75 per Ton
3/8" Fines	\$ 3.15 per Ton	\$ 2.90 per Ton
Load Recycled Materials (Out-Going)	\$ 0.79 per Ton	\$ 0.73 per Ton
Weigh Recycled Materials (Out-Going)	\$ 0.46 per ton	\$ 0.42 per Ton

