A G R E E M E N T

THE AGREEMENT is between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, ("City") and **WASTE MANAGEMENT OF COLORADO, INC,** a Colorado corporation, being a wholly owned subsidiary of Waste Management, Inc. a Delaware corporation, and having an address of 5500 S. Quebec Street, Greenwood Village, Colorado 80111, ("WMC" or "Contractor"; City and Contractor are collectively referred to as the "parties").

RECITALS

A. The parties entered into a "Landfill Agreement" dated January 9, 1998, regarding Contractor's management and operation of the City-owned Denver-Arapahoe Disposal Site ("D.A.D.S.").

B. The parties entered into four prior disposal agreements relating to the City's utilization of D.A.D.S. – the first was dated July 5, 1995 and expired on December 31, 1999, the second was dated April 19, 2000 and was amended to expire June 30, 2005, the third was dated November 15, 2005 amended to expire December 31, 2009; the fourth was dated December 24, 2009 and as amended expired June 30, 2011 (collectively "Prior Disposal Contracts").

C. The parties enter this Agreement without waiving any rights or obligations under the Landfill Agreement or their respective interpretation of the Landfill Agreement regarding the minimum required duration of disposal contracts. Additionally, the City does not waive its rights under the Landfill Agreement to limit rate increases during five-year or greater term disposal contract to CPI.

NOW, THEREFORE, the parties hereby agree as follows:

1. **SERVICES PROVIDED**: Contractor shall provide to the City the use of D.A.D.S., located at 3500 S. Gun Club Road, Aurora, Colorado 80018, and the use of the Disposal and Recycling Inc. Transfer Station ("D & R Facility"), located at 6091 Brighton Boulevard, Commerce City, Colorado 80022, and the Denver South Transfer Station, ("DSTS Facility") located at 2400 W. Union Ave., Englewood, Colorado 80110 and (collectively D & R and DSTS Facilities are referred to as "Transfer Facilities" and Transfer Facilities and D.A.D.S. are collectively referred to as "Facilities") for use by the City, its departments, and agents in the disposal of Waste Material under the following terms and conditions:

A. Obligations of Contractor.

(1) Contractor shall furnish transfer facilities required by the City for the disposition of Waste Material delivered by or on behalf of the City to the Transfer Facilities and shall accept and dispose of all Waste Material delivered by or on behalf of the City to D.A.D.S., during the Term

(2) Contractor shall permit the City, its agents, employees, and contractors the right of ingress and egress to the D & R Facility Monday through Friday 5:00 a.m. through 6:00 p.m., and

Saturday 5:00 a.m. to 2:00 p.m.; DSTS Facility Monday through Friday 5:00 a.m. through 6:00 p.m. and Saturday 5:00 am. to 2:00 p.m.; and D.A.D.S. Monday through Friday 6:00 a.m. through 9:00 p.m., and on Saturday 7:00 a.m. to 4:00 p.m. to deposit under supervision of Contractor, Waste Material or for such extended hours at D.A.D.S. as requested by the City and agreed upon by Contractor, which agreement by Contractor may not be unreasonably withheld. For weeks in which the City has a holiday that requires the City to extend its solid waste disposal service into Saturdays, Contractor shall also permit the City, its agents, employees and contractors the right of ingress and egress at both the Transfer Facilities on Saturdays from 5:00 a.m. to 4:00 p.m. Contractor shall maintain its facilities, equipment and personnel in operation at the Facilities during all such times and will make available dumping and transfer facilities for City trucks during the hours set forth above or for such extended hours as requested by the City and agreed to by Contractor, except during the occasions or under the conditions specified in Paragraph C.(3), below. The Facilities may be closed on the holidays identified in the Landfill Agreement.

(3) Contractor shall operate the Facilities in accordance with the rules and regulations promulgated by any governmental or other public entity having lawful jurisdiction over any of the Facilities with respect to the operation of transfer facilities and landfills, and shall provide all necessary equipment, including earthmoving equipment, water, and watering equipment and operators of such equipment. In this connection, Contractor shall ensure the lawful disposal of Waste Materials delivered by or on behalf of the City to all of the Facilities.

B. Obligations of the City.

(1) The City may commence delivering Waste Material to Contractor at the Facilities July 1, 2011. The City is not required to deliver any minimum quantity of Waste Material to Contractor under the Agreement.

(2) To the extent possible, the City's invoices shall clearly and separately account for disposal of Waste Materials received from any agency other than the Solid Waste Division of the City's Department of Public Works.

(3) The City agrees that no hazardous waste, liquid, or sludge will be knowingly delivered to the D & R or DSTS Facilities or D.A.D.S.

(4) The parties acknowledge that while the City is obligated under the Landfill Agreement to direct un-recycled waste collected or hauled in Denver vehicles to D.A.D.S. and to direct its contractors and subcontractors to direct un-recycled waste from Denver owned or controlled facilities to do the same, which requirements are implemented pursuant to Denver's Executive Order 115, the City is not obligated under the Landfill Agreement and, other than by the December 29, 2009 Agreement as amended, has not been obligated under Prior Disposal Contracts to utilize the D & R or DSTS Facilities. During the Term of this Agreement only, to the extent the City utilizes transfer stations other than its own; on the condition that the Transfer Facilities remain fully operational at their current locations, the City shall use the Transfer Facilities exclusively.

C. Obligations of Contractor and the City.

(1) Contractor shall use its best efforts to ensure that no scavenging of discarded items occurs at the Facilities. The parties agree that nothing in the Agreement, in any manner, prevents Contractor from removing from the delivered Waste Material any cans, containers, cardboard, cartons or other materials not within the scope of the above sentence, which Contractor, in its sole discretion, believes it can recycle or sell.

(2) Clean dirt, including street sweeping dirt, may be disposed of by or on behalf of the City at D.A.D.S. without charge to the City. The City shall be responsible for paying the proper State of Colorado Solid Waste User Fee for no charge street sweeping dirt. Dirt and sand loads that contain excessive amounts of paper, leaves, cans, or other Waste Material are not "clean" for the purposes of this section and will be charged at the appropriate Denver disposal rate. The City will be required to coordinate delivery of clean dirt loads with D.A.D.S. All clean dirt and street sweeping dirt will be hauled directly to D.A.D.S. and will not be accepted at Transfer Facilities.

(3) At the date of execution of the Agreement, Contractor anticipates that during the Term it will have sufficient land and facilities at each of the Facilities available to meet the needs and requirements of the City.

(4) Contractor shall furnish weighing facilities and the personnel needed to weigh all Waste Material delivered by or on behalf of the City at each of the Facilities. The City may, at any time, undertake whatever inspection and checking of the scales is needed to verify the accuracy of the weight measurements. During brief periods acceptable to the City, when the scales are being moved or are not functioning, the weights shall be estimated based upon experience.

(5) The parties shall cooperate with each other in carrying out their respective obligations under the Agreement.

2. COORDINATION AND LIAISON: During the Term, Contractor shall fully coordinate all services under the Agreement with the City, including the Manager of Public Works or as the City otherwise directs. Contractor understands that the City's Manager of Public Works is the City's representative under the Agreement and, until otherwise notified by the Manager, the City's Director of Solid Waste Management in the Department of Public Works is designated as the authorized representative of the Manager through whom contractual services performed under the Agreement must be coordinated, subject, however, to the authority of the Manager of Public Works.

3. TERM OF AGREEMENT: The term of the Agreement is from July 1, 2011 and will expire on December 31, 2014 ("Term").

4. TIME IS OF THE ESSENCE: The parties agree that in the performance of the terms, conditions, and requirements of the Agreement by Contractor, time is of the essence.

5. RATES; PAYMENT:

A. Rates. Rate Sheets. With the exception of rates for calendar year 2012, Contractor shall provide the City with a proposed annual rate schedule of disposal pricing at D.A.D.S. as well as disposal and processing/transportation components of the Base Rate at the Transfer Facilities no later than **July 1** of each year. The rate sheet for July 1, 2011 through and including December 31, 2011 is attached as **Exhibit A** and the rate sheet for calendar year 2012 is attached as Exhibit B. Contractor represents that the rates set forth therein are consistent and competitive with rates at other Denver Metro area non-hazardous waste landfills and are the lowest, best, gate rate, including rates charged to WMC or any WMC parent or affiliate.

B. Rate Adjustment.

(1) Rates for contract years 2013 and 2014 will be adjusted upward by an amount not to exceed five percent(5%) annually from the rates set forth in Exhibit B. The 5% annual rate increase is arrived at based on percentage change in Denver CPI plus an additional percent such that each annual rate increase does not exceed 5%.

C. Payment. Notwithstanding any other provision of the Agreement, the City's maximum payment obligation will not exceed **Seventeen Million Dollars ($17,000,000)** ("Maximum Contract Amount"). Any services performed beyond those set forth above are performed at Contractor's risk and without authorization under the Agreement. The total payment obligation is based on rates and tonnage of Waste Material delivered to the Facilities.

D. Appropriations. The City's payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by the Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. The Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

6. TAXES, CHARGES AND PENALTIES: The City is not liable for the payment of taxes, late charges, or penalties of any nature, except for any additional amounts that the City may be required to pay under the City's prompt payment ordinance D.R.M.C. § 20-107, *et seq*. Contractor shall promptly pay when due, all taxes, bills, debts and obligations it incurs performing the services under the Agreement and shall not allow any lien, mortgage, judgment or execution to be filed against City property

7. STATUS OF CONTRACTOR: Contractor is an independent contractor and corporation 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 City's Charter, and it is not intended, nor shall it be construed, that Contractor or its employees or its subcontractors or their employees, are an employee or officer of the City under Chapter 18 of the Denver Revised Municipal Code or for any purpose, including, without limitation, unemployment compensation or workers' compensation.

8. TERMINATION OF AGREEMENT:

A. The City may by written Notice of Default to Contractor terminate the whole or part of the Agreement in the event Contractor or any of its officers or employees are convicted, plead *nolo contendre*, enter into a formal agreement in which they admit guilt, enter a plea of guilty, or otherwise admit culpability to criminal offenses of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature, in connection with Contractor's business. Subject to the requirements of the Landfill Agreement, the City may otherwise terminate the Agreement as to either or both of the Transfer Facilities, with cause, upon fifteen days prior written notice to Contractor. If Contractor's services are so terminated, it will be paid only for that portion of services satisfactorily completed in accordance with the Agreement at the time of notice of such action.

B. The parties agree that if, during the Term, Contractor no longer has sufficient land or facilities available to meet City's needs and requirements for disposal as described in the Agreement, Contractor may terminate the Agreement upon ninety (90) days written notice to City, and upon termination, both parties are relieved from any further obligations, except for City's obligation to pay for loads of Waste Material disposed of at the Facilities before the effective date of termination, Contractor's obligation to allow such disposal; and except as otherwise provided in paragraphs 10 and 11 of the Agreement. Nothing contained in this section in any way affects the City's obligations set forth in the Landfill Agreement.

9. INSURANCE:

A. General Conditions. Contractor shall secure, at or before the time of execution of the Agreement, the following insurance covering all operations, goods or services provided pursuant to the Agreement. Contractor shall keep the required insurance coverage in force at all times during the Term, or any extension thereof, during any warranty period, and for three (3) years after expiration or earlier termination of the Agreement. The required insurance must be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or endorsement stating "Should any of the above-described policies be canceled or non-renewed before the expiration date thereof, the issuing company shall send written notice to Denver Risk Management, 201 West Colfax Avenue, Dept. 1105, Denver, Colorado 80202. This written notice must be sent thirty (30) days prior to cancellation or non-renewal unless due to non-payment of premiums for which notice must be sent ten (10) days prior." Additionally, Contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the address above by certified mail, return receipt requested. If any policy is in excess of a deductible or self-insured retention, the City must be notified by Contractor. Contractor is responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in the Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of Contractor. Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it deems necessary to cover its obligations and liabilities under the Agreement.

B. Proof of Insurance. Contractor shall provide a copy of the Agreement to its insurance agent or broker. Contractor may not commence services or work relating to the Agreement prior to

placement of coverage. Contractor certifies that the certificate of insurance attached as **Exhibit C**, preferably an ACORD certificate, complies with all insurance requirements of the Agreement. The City requests that the City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in the Agreement does not act as a waiver of Contractor's breach of the Agreement or of any of the City's rights or remedies under the Agreement. The City's Risk Management Office may require additional proof of insurance including, but not limited to, policies and endorsements.

C. Additional Insureds. For commercial general liability, auto liability, excess liability/umbrella, and pollution legal liability, Contractor and subcontractor's insurer(s) shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

D. Waiver of Subrogation. For all coverages, Contractor's insurer shall waive subrogation rights against the City.

E. Subcontractors. All subcontractors (including independent contractors, suppliers or other entities providing goods or services required by the Agreement) are subject to all of the requirements herein and shall procure and maintain the same coverages required of Contractor. Contractor shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all these subcontractors maintain the required coverages. Contractor agrees to provide proof of insurance for all such subcontractors upon request by the City.

F. Workers' Compensation/Employer's Liability Insurance. Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of $100,000 per occurrence for each bodily injury claim, $100,000 per occurrence for each bodily injury caused by disease claim, and $500,000 aggregate for all bodily injuries caused by disease claims. Contractor expressly represents to the City, as a material representation upon which the City is relying in entering into the Agreement, that none of Contractor's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of the Agreement, and that any such rejections previously effected, have been revoked as of the date Contractor executes the Agreement.

G. Commercial General Liability. Contractor shall maintain a commercial general liability insurance policy with limits of $1,000,000 for each occurrence, $1,000,000 for each personal and advertising injury claim, $2,000,000 products and completed operations aggregate, and $2,000,000 policy aggregate. Aggregate limits must be "per project" or "per location."

H. Business Automobile Liability. Contractor shall maintain business automobile liability with limits of $1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under the Agreement. If transporting hazardous material or regulated substances, Contractor shall carry a pollution coverage endorsement and an MCS 90 endorsement on their policy. Transportation coverage under Contractors Pollution Liability policy

shall be an acceptable replacement for a pollution endorsement to the Business Automobile Liability policy.

I. Pollution Legal Liability. Contractor shall maintain limits of $2,000,000 per occurrence and in the aggregate

J. Contractors Pollution Liability Including Errors and Omissions. Contractor shall maintain limits of $1,000,000 per occurrence and $2,000,000 policy aggregate. Policy to include coverage for errors and omissions, bodily injury, property damage, defense costs, clean up costs, and completed operations.

K. Excess/Umbrella Liability. Contractor shall maintain excess liability limits of $1,000,000. Coverage must be written on a "follow form" basis. Any combination of primary and excess coverage may be used to achieve required limits.

L. Additional Provisions.

(1) For commercial general liability and excess liability, the policies must provide the following:

That the Agreement is an Insured Contract under the policy;

a. Defense costs in excess of policy limits;

b. A severability of interests, separation of insureds or cross liability provision; and

c. A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.

(2) For claims-made coverage the retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier.

(3) Contractor shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At its own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

10. DEFENSE AND INDEMNIFICATION:

A. Contractor hereby agrees to defend, indemnify, reimburse and hold harmless the City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under the Agreement ("Claims"), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the

City. This indemnity shall be interpreted in the broadest possible manner to indemnify the City for any acts or omissions of Contractor or its subcontractors either passive or active, irrespective of fault, including the City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of the City.

B. Contractor's duty to defend and indemnify the City arises at the time written notice of the Claim is first provided to the City regardless of whether Claimant has filed suit on the Claim. Contractor's duty to defend and indemnify the City shall arise even if the City is the only party sued by claimant and/or claimant alleges that the City's negligence or willful misconduct was the sole cause of claimant's damages.

C. Contractor will defend any and all Claims that may be brought or threatened against the City and will pay on behalf of the City any expenses incurred by reason of Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating Claims or seeking to enforce this indemnity obligation. Such payments on behalf of the City are in addition to any other legal remedies available to the City and are not to be considered the City's exclusive remedy.

D. Insurance coverage requirements specified in the Agreement shall in no way lessen or limit the liability of Contractor under the terms of this indemnification obligation. Contractor shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

E. This defense and indemnification obligation survives the expiration or termination of the Agreement.

11. FORCE MAJEURE: Contractor is not responsible for stoppages of its operations and will be relieved of all obligation under the Agreement during such stoppages, when such stoppages are due to strikes, the inability to obtain parts to keep its equipment in operation due to the military requirements of the United States government, labor difficulties, weather making it impossible or impracticable to operate the facility and other Acts of God, events or matters over which Contractor has no control. Except as provided below, Contractor is not responsible for the acts or directives of any governmental agency or unit that may terminate, restrict, or otherwise affect the operation of its Facilities and Contractor is relieved of all obligations under the Agreement in the event of such acts of directives. If any such governmental act or directive is taken in response to violations of federal, state, or local laws and regulations attributable to Contractor, Contractor is responsible for any such governmental act or directive and is not relieved of any its obligations under the Agreement. In the event of such occurrence, it is agreed that the City may intervene to use its offices in an effort to comply with the governmental acts or directives and resume operation. Contractor shall notify the Manager of Public Works of the City immediately of any force majeure incident.

12. ASSIGNMENT; SUBCONTRACTING: Contractor shall not voluntarily or involuntarily assign any of its rights or obligations, or subcontract performance obligations, under the Agreement without obtaining the Manager's prior written consent. Any assignment or subcontracting without such consent will be ineffective and void, and shall be cause for termination of the Agreement by the City. The Manager has sole and absolute discretion whether to consent to any assignment or subcontracting, or to terminate the Agreement because of unauthorized

assignment or subcontracting. In the event of any subcontracting or unauthorized assignment: (i) Contractor remains responsible to the City; and (ii) no contractual relationship is created between the City and any subcontractor or assign.

13. INUREMENT: The rights and obligations of the parties to the Agreement inure to the benefit of and shall be binding upon the parties and their respective successors and assigns, provided assignments are consented to in accordance with the terms of the Agreement.

14. NO THIRD PARTY BENEFICIARY: Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the City or Contractor receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.

15. NO AUTHORITY TO BIND CITY TO CONTRACTS: Contractor lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the Denver Revised Municipal Code.

16. SEVERABILITY: Except for the provisions of the Agreement requiring appropriation of funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of the Agreement or any portion of it to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the parties can be fulfilled.

17. CONFLICT OF INTEREST:

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

B. Contractor shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. Contractor 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 Contractor by placing Contractor's own interests, or the interests of any party with whom Contractor has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate the Agreement in the event it determines a conflict exists, after it has given Contractor written notice describing the conflict.

18. NOTICES: All notices required by the terms of the Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, to the parties as indicated below. Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The parties may

designate substitute addresses where or persons to whom notices are to be mailed or delivered. These substitutions, however, will not become effective until actual receipt of written notification.

If to Contractor:

Waste Management of Colorado
Director of Landfill Operations
550 S. Quebec St., Suite 250
Greenwood Village, CO 80111

With a copy of any termination and violation notices to:

Waste Management of Colorado
Senior Legal Counsel
2400 W. Union Ave.
Englewood, CO 80110

and

Waste Management of Colorado
Area Vice President
5500 S. Quebec St., Suite 250
Greenwood Village, CO 80111

If to the City

Director, Solid Waste Management
2000 West Third Avenue, Third Floor
Denver, Colorado 80223

With a copy of any termination and violation notices to:

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

Manager, Department of Public Works
201 West Colfax Avenue, Dept. 608
Denver, Colorado 80204

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

A. The Agreement is subject to Article 17.5 of Title 8, Colorado Revised Statutes, and any amendments (the "Certification Statute"). Contractor is liable for any violations as provided in the Certification Statute.

B. Contractor certifies that:

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

(2) It will participate in either the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., or the employment verification program established by the Colorado Department of Labor and Employment under § 8-17.5-102 (5)(c), C.R.S. (the "Department Program"), to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement.

C. Contractor also agrees and represents that:

(1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(2) It shall not enter into a contract with a subcontractor that fails to certify to Contractor 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 the Agreement, through participation in either the E-Verify Program or the Department Program.

(4) It is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement.

(5) If it obtains actual knowledge that a subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify the subcontractor and the City within three (3) days. Contractor will also then terminate such subcontractor if within three (3) days after this notice the subcontractor does not stop employing or contracting with the illegal alien, unless during this three-day period the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

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

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

21. <u>NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT</u>:

A. The 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. Contractor certifies that:

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

C. Contractor also agrees and represents that:

(1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(2) It shall not enter into a contract with a subcontractor that fails to certify to Contractor 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 the 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 Contractor to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

(5) If it obtains actual knowledge that a subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subcontractor and the City within three (3) days. Contractor will also then terminate such subcontractor if within three (3) days after such notice the subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

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

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

22. GOVERNING LAW; VENUE: The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into the Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado, Second Judicial District.

23. EXAMINATION OF RECORDS: Section 7.0 "Audit Provisions" of the Landfill Agreement are hereby incorporated by reference.

24. OPEN RECORDS ACT. Contractor understands that the City is subject to the Colorado Open Records Act, Colo. Rev. Stat. § 24-72-201, *et seq*. The City shall notify Contractor of a request for disclosure of information under the Open Records Act as soon as reasonably practical. If Contractor objects to the requested disclosure, Contractor shall enter and defend or assist the City in defending against any action seeking disclosure of such information, and shall bear all reasonable costs incurred by the City to protect from disclosure information obtained from Contractor pursuant to the Agreement.

25. NO DISCRIMINATION IN EMPLOYMENT: In connection with the performance of work under the Agreement, Contractor may not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender variance, marital status, or physical or mental disability. Contractor shall insert the foregoing provision in all subcontracts.

26. COMPLIANCE WITH ALL LAWS: Contractor shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States, the State of Colorado; and with the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver.

27. LEGAL AUTHORITY: Contractor represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into the Agreement. Each person signing and executing the Agreement on behalf of Contractor represents and warrants that he has been fully authorized by Contractor to execute the Agreement on behalf of Contractor and to validly and legally bind Contractor to all the terms, performances and provisions of the Agreement. The City has the right, in its sole discretion, to either temporarily suspend or permanently terminate the Agreement if there is a dispute as to the legal

authority of either Contractor or the person signing the Agreement to enter into the Agreement.

28. NO CONSTRUCTION AGAINST DRAFTING PARTY: The parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any party merely because any provisions of the Agreement were prepared by a particular party.

29. ORDER OF PRECEDENCE: In the event of any conflicts between the language of the Agreement and the exhibits, the language of the Agreement controls.

30. SURVIVAL OF CERTAIN PROVISIONS: The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable. Without limiting the generality of this provision, Contractor's obligations to provide insurance and to indemnify the City will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

31. ADVERTISING AND PUBLIC DISCLOSURE: Contractor shall not include any reference to the Agreement or to services performed pursuant to the Agreement in any of Contractor's advertising or public relations materials without first obtaining the written approval of the Manager. Any oral presentation or written materials related to services performed under the Agreement will be limited to services that have been accepted by the City. Contractor shall notify the Manager in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials.

32. CITY EXECUTION OF AGREEMENT: The Agreement will not be effective or binding on the City until it has been fully executed by all signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

33. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS: The Agreement together with the applicable provisions of the Landfill Agreement is the complete integration of all understandings between the parties as to the subject matter of the Agreement. No prior, contemporaneous or subsequent addition, deletion, or other modification has any force or effect, unless embodied in the Agreement in writing. No oral representation by any officer or employee of the City at variance with the terms of the Agreement or any written amendment to the Agreement will have any force or effect or bind the City. Any conflict between the terms of the Agreement and those of the Landfill Agreement such that both or all provision cannot be given effect, then and in that event, the terms of the Landfill Agreement will apply.

34. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS: Contractor shall cooperate and comply with the provisions of Executive Order 94 and its Attachment A concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in contract personnel being barred from City facilities and from participating in City operations.

35. <u>COUNTERPARTS OF THE AGREEMENT</u>: The Agreement will be executed in two counterparts, each of which is an original and constitute the same instrument.

36. <u>ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS</u>: Consultant 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."