



HHW MATERIALS MANAGEMENT SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this 12th day of March, 2018, by and between the **CITY OF BILLINGS, MONTANA**, a municipal corporation organized and existing under the laws of the State of Montana, P.O. Box 1178, Billings, Montana 59103, hereinafter referred to as "City," and **CLEAN HARBORS ENVIRONMENTAL SERVICES**, of Denver, CO hereinafter referred to as "Contractor."

In consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency whereof being hereby acknowledged, the parties hereto agree as follows:

1. **Purpose:** City agrees to hire Contractor as an independent contractor to perform the services of HHW materials management described in the Scope of Work attached hereto as Exhibit "A" and by this reference made a part hereof.

2. **Effective Date:** This Agreement is effective for three (3) years upon the date of its execution and will terminate on _____. The parties may extend this agreement for one year, by mutual concurrence in writing prior to its termination. The parties reserve the right to implement a mutually agreed upon unit price increase on an annual basis at the approximate time the contract is mutually extended. The unit price increase will be limited to 5% on an annual basis.

3. **Scope of Work:** The Contractor shall perform the services outlined in Exhibit "A". In performing these services, the Contractor shall at all times comply with all federal, state and local statutes, rules and ordinances applicable. These services and all duties incidental or necessary therefor, shall be performed diligently and completely and in accordance with professional standards of conduct and performance.

4. **Payment:** City agrees to pay Contractor, not to exceed, one hundred thousand dollars (\$100,000) per year for the work described in Exhibit A, Scope of Work, and outlined in Exhibit B, Pricing Breakdown. Any alteration or deviation from the described work that involves extra costs will be executed only upon written request by the City to Contractor and will become an extra charge over and above the contract amount. The parties must agree upon any extra charges in writing.

5. **Independent Contractor Status:** The parties agree that Contractor is an independent contractor for purposes of this Agreement and is not to be considered an employee of the City for any purpose. Contractor is not subject to the terms and provisions of the City's personnel policies handbook and may not be considered a City employee for workers' compensation or any other purpose. Contractor is not authorized to represent the City or otherwise bind the City in any dealings between Contractor and any third parties.



Contractor shall comply with the applicable requirements of the Workers' Compensation Act, Title 39, Chapter 71, MCA, and the Occupational Disease Act of Montana, Title 39, Chapter 71, MCA. Contractor shall maintain workers' compensation insurance coverage for all members and employees of Contractor's business, except for those members who are exempted as independent contractors under the provisions of §39-71-401, MCA.

Contractor shall furnish City with copies showing one of the following: (1) proof of registration as a registered contractor under Title 39, Chapter 9, MCA; (2) a binder for workers' compensation coverage by an insurer licensed and authorized to provide workers' compensation insurance in the State of Montana; or (3) proof of exemption from workers' compensation granted by law for independent contractors.

6. **Indemnity and Insurance:** Contractor agrees to indemnify, defend and save City, its officers, agents and employees harmless from any and all losses, damage and liability occasioned by, growing out of, or in any way arising or resulting from any intentional or negligent act on the part of Contractor or its agents or employees. **For this purpose, Contractor shall provide City with proof of both Commercial General liability and automobile insurance each issued by a reliable company or companies for personal injury and property damage, in an amount not less than \$1.5 million per occurrence and naming the City as an additional insured. The insurance must be in a form suitable to City.**

7. **Warranty:** Contractor warrants that all services and work will be performed in a good workman-like manner. Contractor acknowledges that it will be liable for any breach of this warranty for the lesser period of one (1) year from the time services are completed or any warranty described in the Scope of Work in Exhibit "A".

8. **Compliance with Laws:** Contractor agrees to comply with all federal, state, and local laws, ordinances, rules and regulations. Contractor agrees to purchase a City business license.

Unless superseded by federal law, Montana law requires that contractors and subcontractors give preference to the employment of Montana residents for any public works contract in excess of \$25,000 for construction or nonconstruction services in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted pursuant thereto. Unless superseded by federal law, each contractor shall ensure that at least 50% of the contractor's workers performing labor on a construction project are bona fide Montana residents. The Commissioner of the Montana Department of Labor and Industry has established the resident requirements in accordance with sections 18-2-403 and 18-2-409, MCA. Any and all questions concerning prevailing wage and Montana resident issues should be directed to the Montana Department of Labor and Industry.



In addition, unless superseded by federal law, all employees working on a public works contract shall be paid prevailing wage rates in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted pursuant thereto. Montana law requires that all public works contracts, as defined in section 18-2-401, MCA, in which the total cost of the contract is in excess of \$25,000, contain a provision stating for each job classification the standard prevailing wage rate, including fringe benefits, travel, per diem, and zone pay that the contractors, subcontractors, and employers shall pay during the public works contract.

Section 18-2-406, MCA, requires that all contractors, subcontractors, and employers who are performing work or providing services under a public works contract post in a prominent and accessible site on the project staging area or work area, no later than the first day of work and continuing for the entire duration of the contract, a legible statement of all wages and fringe benefits to be paid to the employees in compliance with section 18-2-423, MCA. Section 18-2-423, MCA, requires that employees receiving an hourly wage must be paid on a weekly basis.

Furthermore, Section 18-2-417, requires allowance for a 3% annual increase in wages for a multiyear contract. (1) Any public works contract that by the terms of the original contract calls for more than 30 months to fully perform must include a provision to adjust, as provided in subsection (2), the standard prevailing rate of wages to be paid to the workers performing the contract. (2) The standard prevailing rate of wages paid to workers under a contract subject to this section must be adjusted 12 months after the date of the award of the public works contract. The amount of the adjustment must be a 3% increase. The adjustment must be made and applied every 12 months for the term of the contract. (3) Any increase in the standard rate of prevailing wages for workers under this section is the sole responsibility of the contractor and any subcontractors and not the contracting agency.

Each contractor, subcontractor, and employer must maintain payroll records in a manner readily capable of being certified for submission under section 18-2-423, MCA, for not less than three years after the contractor's, subcontractor's, or employer's completion of work on the public works contract.

More information and appropriate prevailing wage rate booklets are available at <http://erd.dli.mt.gov/labor-standards/state-prevailing-wage-rates>.

9. Contractors' Gross Receipts Tax: Contractor understands that all contractors or subcontractors working on a publicly funded construction project, including any work requiring the installation, addition, placement, replacement, or removal of any equipment, parts, structures, or materials of any kind whatsoever, are required to pay or have withheld from earnings one percent (1%) of the gross contract price if the gross contract price is Five Thousand Dollars (\$5,000) or more.



10. Nondiscrimination: Contractor agrees that all hiring by Contractor of persons performing this Agreement will be on the basis of merit and qualification and will not discriminate on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

The Contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a), which prohibit discrimination against qualified protected veterans and/or qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.

11. Default and Termination: If either party fails to comply with any condition of this Agreement at the time or in the manner provided for, the other party may, at its option, terminate this Agreement and be released from all obligations if the default is not cured within ten (10) calendar days after written notice is provided to the defaulting party. Said notice shall set forth the items to be cured. Additionally, the non-defaulting party may bring suit for damages, specific performance, and any other remedy provided by law. These remedies are cumulative and not exclusive. Use of one remedy does not preclude use of the others. Notices shall be provided in writing and hand-delivered or mailed to the parties at the addresses set forth in the first paragraph of this Agreement.

12. Liaison: City's designated liaison with Contractor is Vester Wilson, Public Works Solid Waste Division Superintendent, and Contractor's designated liaison with City is:

Michael Bannister, HHW Program Manager
4721 Ironton Street
Denver, CO 80239
720-357-4346
bannister.michaelp@cleanharbors.com

13. Governing Law and Venue: This Agreement shall be construed and enforced in accordance with the laws of the State of Montana. Venue for any suit between the parties arising out of this Agreement shall be the State of Montana Thirteenth Judicial District Court, Yellowstone County.

14. Severability: Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the City and the Contractor, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.



15. **Successors and Assigns:** Neither the City nor the Contractor shall assign, transfer or encumber any rights, duties or interests accruing from this Agreement without the written consent of the other.

16. **Ownership of Documents:** All documents, data, drawings, specifications, software applications and other products or materials produced by the Contractor in connection with the services rendered under this Agreement shall be the property of the City whether the project for which they are made is executed or not. All such documents, products and materials shall be forwarded to the City at its request and may be used by the City as it sees fit. The City agrees that if the documents, products and materials prepared by the Contractor are used for purposes other than those intended by the Agreement, the City does so at its sole risk and agrees to hold the Contractor harmless for such use. All or any portions of materials, products and documents produced under this Agreement may be used by the Contractor upon confirmation from the City that they are subject to disclosure under the Public Disclosure Act. All services performed under this Agreement will be conducted solely for the benefit of the City and will not be used for any other purpose without written consent of the City. Any information relating to the services will not be released without the written permission of the City. The Contractor shall preserve the confidentiality of all City documents and data accessed for use in Contractor's work product.

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above written.

CITY OF BILLINGS, MONTANA

CLEAN HARBORS
ENVIRONMENTAL SERVICES

By _____

By 

WILLIAM A. COLE, Mayor

Marc McReynolds, Vice President

APPROVED AS TO FORM:

By



BRENT BROOKS, City Attorney



Exhibit A Scope of Work

Waste Acceptance & Segregation

City employees will collect HHW materials from participant vehicles and transfer the waste material from the vehicle segregated into the appropriate storage trailers. Unknown materials will be set-aside for later classification by a Contractor Chemist. City employees will reject any unacceptable waste.

Packaging & Consolidation

Once or twice a week (actual time interval to be determined and adjusted as needed), a trained technician, utilizing the appropriate packaging method for each waste material, as determined in accordance with container size, type, and hazardous characteristics, will pack and consolidate waste materials. This includes all the necessary labelling and associated paperwork. The technician may request assistance from a City employee if performing a task which requires two persons for safety reasons. Contractor will mobilize one technician for the on-site tasks to reduce costs as compared to having two employees on-site each week.

Paperwork, Transportation & Reporting

As waste is packed, the waste containers will be sealed, labeled and set-aside for subsequent pickup. Contractor will prepare all shipping paperwork in accordance with all Federal, State and Local regulations including but not limited to: manifests, land disposal restriction forms, packing lists, and container labels.

Contractor shall perform the following items, prior to leaving the site:

- Verify all waste has been properly packed
- Review lab-pack drum inventories for compatibility
- Check drums for proper markings and labels and accumulation dates
- Check drum inventory sheets
- Ensure drums are free and clean of contamination
- Check that drum rings and bungs are secure
- Count all drums prior to loading
- Make sure Manifests are completed and signed by generator
- Make sure Bills of Lading are completed and signed by generator
- Include all proper variances with manifests
- Place proper placards on truck prior to transport and checked against manifest

Contractor will transport the waste materials to a Contractor approved recycling/disposal facility. Contractor will prepare a monthly/quarterly report for the City of the waste materials shipped.



**EXHIBIT B
PRICING BREAKDOWN**

<u>Wastestream</u>	<u>WCC</u>	<u>Price/Container</u>	<u>Container Size</u>
Acids/Bases	LCCR	\$288.75	55 Gallon Drum
Aerosol – Nonpesticide	LCCRQ	\$603.75	Cubic Yard Box
Aerosol – Pesticide	LCCRQ	\$246.75	55 Gallon Drum
Small flammable gas cylinders*	LCY1	\$551.25	55 Gallon Drum
Batteries, wet, acid	LBLA	\$472.50	Pallet
Fuels	FB1	\$162.75	55 Gallon Drum
Mercury			
*MANUFACTURED ARTICLES ONLY	LCHG2	\$449.40	05 Gallon Drum
CFL's	CFL8	\$338.10	4FTB
Light Tubes	CFL1	\$164.85	4FTB
Oil Base Paint (bulked)	FB2	\$189.00	55 Gallon Drum
Paint related Material (loose packed)	LPTP	\$467.25	Cubic Yard Box
Oxidizers	LCCRO	\$304.50	55 Gallon Drum
PCB ballasts	LCHSI	\$362.25	55 Gallon Drum
Peroxides	LRCTO	\$160.65	05 Gallon Drum
Pesticides Lab packed	LCCRC	\$288.75	55 Gallon Drum
Reactive (Calcium Carbide)	LRCT	\$160.65	05 Gallon Drum
Flammable Solids	LCCRD	\$84.53	05 Gallon Drum
Lithium Batteries for recycle	LBBGB	\$141.75	BGB
Pesticide liquid(bulk)	D90K	\$309.75	55 Gallon Drum
Wastestream			
Antifreeze	B35	\$0.50	Gallons
Used Oil	A31	\$0.25	Gallons
Stop Fee		\$100.00	
Labor Description			
Chemist		\$57.50	Hour
HHW Technician		\$47.00	Hour
Wastestream			
Small flammable gas cylinders	LCY1	\$12.00	CYLE
Small flammable gas cylinders	LCY1	\$23.00	CYSM



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
12/19/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Willis of Massachusetts, Inc. c/o 26 Century Blvd P.O. Box 305191 Nashville, TN 372305191 USA	CONTACT NAME: PHONE (A/C, No., Ext): 1-877-945-7378 FAX (A/C, No.): 1-888-467-2378 E-MAIL ADDRESS: certificates@willis.com	
	INSURER(S) AFFORDING COVERAGE	
INSURED Clean Harbors Environmental Services, Inc. and its Affiliates 42 Longwater Drive Norwell, MA 02061	INSURER A: ACE American Insurance Company	NAIC # 22667
	INSURER B: ACE Property & Casualty Insurance Company	20699
	INSURER C: Indemnity Insurance Company of North Ameri	43575
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** W4705517 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> XCU <input checked="" type="checkbox"/> Contractual GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:		Y	HDOG27872189	11/01/2017	11/01/2018	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000	
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY <input checked="" type="checkbox"/> MCS-90		Y	ISAH2509718A	11/01/2017	11/01/2018	COMBINED SINGLE LIMIT (Ea accident) \$ 5,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$	
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 0			G4682586A 001	11/01/2017	11/01/2018	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000	
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y/N No	N/A	WLRC64620940 (AOS)	11/01/2017	11/01/2018	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 2,000,000 E.L. DISEASE - EA EMPLOYEE \$ 2,000,000 E.L. DISEASE - POLICY LIMIT \$ 2,000,000
A	Workers Compensation & Employers Liability Per Statute			WLRC64620939 (AZ, CA, MA)	11/01/2017	11/01/2018	E.L. Each Accident \$2,000,000 E.L. Disease -Pol Lmt \$2,000,000 E.L. Disease Each Emp \$2,000,000	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Scope of Work: All operations of the Named Insured.
SEE ATTACHED

CERTIFICATE HOLDER City of Billings Attn: Vester Wilson 4848 Midland Road Billings, MT 59101	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 