

**July 1, 2014**

**To: Mayor Bemrich and City Council**  
**From: David Fierke, City Manager**  
**Subject: Waste Management Recycling Contract**



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**ACTION: For vote Monday, June 7<sup>th</sup>, 2014**

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**Brief History**

In August of 2012, the city began collecting single stream recycling from 200 customers as part of a pilot program. The recyclables were transported to Waste Management Recycle America's (WMRA) mechanical sorting facility in Des Moines (Formerly Green Star of North America). WMRA's mechanical sorting facility is the closest known facility and is the only option available to handle Fort Dodge's single stream of recyclables. The Fort Dodge Recycling Center is not set up to handle a single stream of material.

**Analysis of Issue**

In February of 2014, the City began its automated collection of recyclables and garbage citywide to eligible customers. WMRA agreed to handle the material while a Fort Dodge Supply Agreement was drafted. WMRA has completed the Agreement which includes a calculation for a rebate on the tons of material that Fort Dodge supplies.

- A. Blended value of Fort Dodge's material is \$71.92 per ton for each ton delivered; and
- B. The Customer's Value Share is 95%; and
- C. The Company Fee is \$65.00 per Ton, for each Ton delivered; and
- D. The Environmental Fee is \$1.25 per Ton, for each Ton delivered;

The Net Value per ton, for each ton delivered, paid to Fort Dodge is:

$95\% \times \$71.91 = \$68.31$  Value Share.

$\$68.31 - \$65.00 - \$1.25 = \$2.06$  Net Value per ton for each ton delivered, paid by the Company to the Customer. Currently the city is delivering about 100 tons of material to WMRA per month, which equates to an annual rebate of \$2,472.

The rebate is small and was not intended to finance any part of the new automated program. Savings in operations are anticipated in lower landfill costs by diverting material away from the landfill and lower operational costs by reducing the number of employees needed to collect garbage and recycling.

**Budget Impact**

None

**Strategic Plan Impact**

Infrastructure Policy D.4.2: Advanced planning for all infrastructure facilities shall be supported and routinely updated. Facilities benefited by advanced planning shall include, at minimum, schools, health care, residential areas, roads, water, sewer, storm water management, parks, recreation and greenways.

**Comprehensive Plan Impact**

Not applicable.

**Subcommittee or Commission Review / Recommendation**

None.

**Staff Conclusions / Recommendations**

Staff recommends authorizing the Agreement with WMRA.

**Alternatives**

None.

**Implementation and Accountability**

Upon formal action from the City Council, the Agreement with Waste Management Recycle America will be signed by the Mayor and a copy sent to WMRA.

Signed



Greg N. Koch  
Director of Public Works

Approved



David R. Fierke  
City Manager

**CITY OF FORT DODGE SUPPLY AGREEMENT  
(SYSTEM AUDIT)**

THIS SUPPLY AGREEMENT ("Agreement") is made as of May 1, 2014, and is effective as of May 1, 2014 ("Effective Date") by and between WM Recycle America, L.L.C. ("Company"), with a business address of 2742 East Market Street Des Moines, IA 50317, and City of Fort Dodge, a political subdivision of the State of Iowa ("Customer"), with a principal office address of 3001 8th Avenue South Fort Dodge, IA 50501. (Customer and Company are each a "Party" and collectively the "Parties".)

**1. TERM**

The Agreement shall expire on the date which is three (3) years from the Effective Date (the "Initial Term") unless renewed as provided herein. The Agreement may be renewed upon mutual agreement for additional One (1) year periods (each a "Renewal Term") if a Party requests renewal in writing at least ninety (90) days prior to the expiration of the Initial Term or then current Renewal Term and the other Party agrees to renewal in writing within thirty (30) days of receipt of request. The Initial Term and Renewal Terms are collectively the "Term".

**2. DEFINITIONS**

"**Applicable Law**" means any law, regulation, requirement, or order of any Federal, State or local agency, court or other domestic or foreign governmental body, or interpretation thereof by any court or administrative agency of competent jurisdiction, and requirements of all permits, licenses, and governmental approvals applicable to the acquisition, design, construction, equipping, testing, financing, ownership, possession, or operation of Designated Facilities and performance under this Agreement.

"**Blended Value**" or "**BV**" is the total weighted value per Ton of each Recyclable and Non-Recyclable component (including negatively-valued Recyclables and transfer and disposal costs of Non-Recyclables) for the Single Stream Materials delivered by or on behalf of Customer to the Designated Facility.

"**Composition Audit**" means the basis upon which Single Stream Materials are measured to determine the percentage of each Recyclable and Residue component resulting from processing as further described in Exhibit B.

"**Company Fee**" means the compensation per Ton for costs incurred by Company to prepare Recyclables for end markets, i.e., those actions necessary to render Recyclables acceptable to end markets and/or designated buyers.

"**CPI**" means the Consumer Price Index-All Urban Consumers (CPI-U), Chicago, All Items, Not Seasonally Adjusted, as published by the United States Department of Labor, Bureau of Labor Statistics (1982-1984=100).

"**Customer's Value Share**" means the Customer's percentage of the Blended Value as set forth on Exhibit C.

"**Designated Facility**" or "**Designated Facilities**" means Company's operations located at 2742 East Market Street Des Moines, IA 50317 which receives Customer's Single Stream Materials.

"**Designated Holidays**" are New Year's Day, Memorial Day, July 4<sup>th</sup>, Labor Day, Thanksgiving Day and Christmas Day.

"**Excluded Materials**" means radioactive, volatile, corrosive, flammable, explosive, biomedical, infectious, bio-hazardous or toxic substance or material, or regulated medical or hazardous waste as defined by, characterized or listed under applicable federal, state, or local laws or regulations, materials containing information (in hard copy or electronic format, or otherwise) which information is protected or regulated under any local, state or federal privacy or data security laws, including, but not limited to the Health Insurance Portability and Accountability Act of 1996, as amended, or other regulations or ordinances, and/or any other waste not approved in writing by COMPANY.

"**Maximum Non-Recyclables Level**" means ten percent (10%) of the gross weight of incoming loads of Single Stream Materials.

"**Net Value**" means the amount paid to Customer by Company, or paid to Company by Customer, after subtracting any charges owed by Customer from the Customer's Value Share.

"**Non-Recyclables**" means any materials in the Single Stream Materials that are not Recyclables as set forth in Exhibit A.

"**Receiving Hours**" means the regularly-scheduled hours of operation for the Designated Facility

"**Recyclables**" means acceptable materials contained within the Single Stream Materials as set forth and further defined in Exhibit A.

"**Residue**" means the Non-Recyclables and other materials removed from the Single Stream Materials during processing due to their size, type, condition or processing system constraints, and which are disposed of after such processing.

"**Single Stream Materials**" means all Customer's materials delivered to Company containing Recyclables and Non-Recyclables.

"**Specifications**" means the description of the Single Stream Materials as set forth in Exhibit A.

"**Ton**" means 2,000 pounds.

"**Uncontrollable Circumstances**" means any act of terrorism, act of God, landslides, lightning, forest fires, storms, floods, typhoons, hurricanes, severe weather, freezing, earthquakes, volcanic eruptions, other natural disasters or the imminent threat of such natural disasters, pandemics, quarantines, civil disturbances, acts of the public enemy, wars, blockades, public riots, labor unrest (e.g., strikes, lockouts, or other labor

disturbances), acts of domestic or foreign governments or governmental restraint or other causes, whether of the kind enumerated or otherwise, and whether foreseeable or unforeseeable, that are not reasonably within the control of a party.

### **3. QUANTITY AND QUALITY**

a. During the term of the Agreement, Company shall take and Customer agrees to provide one hundred percent (100%) of the Single Stream Materials collected by or on behalf of Customer. Customer shall not discontinue collection of any material listed as a Recyclable, nor divert, retract, or withdraw from the Single Stream Materials any Recyclables listed in Exhibit A without the express written consent of Company. Customer shall not allow scavenging of any Recyclables from the Single Stream Materials. Any additions to the listing of acceptable Recyclables in Exhibit A shall be made upon the mutual agreement of Customer and Company.

b. Customer represents and warrants that it shall provide and deliver the Single Stream Materials in accordance with the Specifications set forth in Exhibit A. Title to Recyclables provided by Customer to Company is transferred to Company upon Company's receipt or collection unless otherwise provided in this Agreement or Applicable Law. Title to and liability for Excluded Materials shall remain with Customer at all times.

c. Composition Audits shall be performed by Company in accordance with Exhibit B on Single Stream Materials delivered to the Designated Facility by or on behalf of Customer in order to identify the overall material composition and associated Blended Value.

### **4. PRICING/PAYMENTS**

Payments and charges to Customer shall be calculated as set forth on Exhibit C. Company shall pay Customer (or Customer shall pay Company) the Net Value of the Single Stream Materials. Where the Net Value is positive, Company shall pay Customer on or about the last day of the month following delivery for those Single Stream Materials purchased during the preceding month. Where the Net Value is negative, Customer shall pay Company upon receipt of invoice.

### **5. DELIVERIES**

Customer shall deliver Single Stream Materials at Customer's expense to the Designated Facility during Receiving Hours. All Single Stream Materials must be delivered in self-dumping trucks and will be weighed in and out by Company at the Designated Facility. Company shall use reasonable efforts to ensure Customer's wait time for Customer's delivery vehicles is less than twenty (20) minutes.

### **6. DESIGNATED FACILITY STANDARDS**

a. Company shall provide certified scales for weighing Single Stream delivered to the Designated Facility. Scales shall be regularly calibrated as required by Applicable Law. Company shall make available to Customer weight tickets for each load of Single Stream delivered, or otherwise provide electronic weight records.

b. If Excluded Materials are delivered to the Facility by or on behalf of Customer, Company, in its sole discretion, may reject the entire load, or separately contain, set aside, segregate, isolate and manage such Excluded Materials as required by Applicable Law. Customer will be notified promptly of the location, general character and amount of such Excluded Materials. If requested by Company, Customer must remove, or cause to be removed, such Excluded Materials from the Designated Facility and shall transport and dispose of, or shall cause such Excluded Materials to be transported and disposed, in accordance with Applicable Law. If Customer fails to timely remove such Excluded Materials after request by Company, Company may, after notice to Customer, transport and dispose of such Excluded Materials and charge the costs thereof to Customer.

c. Company shall recycle the Recyclables for reuse and, provided that there is a commercially reasonable available market for such material, shall not dispose of any Recyclables, except such Residue left after appropriate processing of the Single Stream Materials. Company makes no representations as to the recyclability of the Recyclables and may dispose of such Recyclables when no reasonable commercial market exists.

### **7. PUBLIC EDUCATION AND OUTREACH**

The parties acknowledge that maintenance of the quality of the Single Stream Materials is a requirement of this Agreement, subject to the provisions herein. Customer shall use reasonable efforts to inform its residents of the quality requirements hereunder and enforce its standards for the acceptance of Single Stream Materials. Company shall provide reasonable assistance to Customer in such efforts.

### **8. INSURANCE**

Company will keep in full force and effect insurance coverage, as follows: (i) workers' compensation insurance in the amounts required by Applicable Law; (ii) automobile liability insurance with limits of at least \$1,000,000 combined single limit for bodily injury and property damage per occurrence; and (iii) commercial general liability insurance with limits of at least \$1,000,000. Company shall provide a Certificate of Insurance naming Customer as an additional insured upon request of Customer.

### **9. INDEMNIFICATION/LIMIT OF LIABILITY**

Company shall indemnify and hold harmless Customer, its employees, agents and officials from any and all claims, losses or expenses resulting from any accidents, injuries or damages to persons or properties, suits or demands including reasonable attorney fees which may be made against the Customer, its employees, agents or officials to the extent caused by Company's negligent act or omission or willful misconduct, or breach of this Agreement. Company's indemnification obligations will not apply to occurrences involving Excluded Materials delivered by or on behalf of Customer. Customer shall indemnify and hold harmless Company, its employees, agents and officials from any and all claims, losses or expenses resulting from any accidents, injuries or damages to persons or properties, suits or demands including reasonable attorney fees which may be made against the Company, its employees, agents or officials to the extent caused by Customer's negligent act or omission, willful misconduct, or breach of this Agreement. Neither party shall be liable to the other for special, consequential, incidental or punitive damages arising out of the performance of this Agreement.

### **10. EFFECT OF MATERIAL CHANGE AFFECTING AGREEMENT**

In the event that a change in Applicable Law or a material change in market conditions occurs, including but not limited to lack of commercially reasonable market availability for processed Recyclables, changes in market specifications affecting the salability of processed Recyclables, changes

affecting the recyclability or marketability of Recyclables, changes in the quantity, quality or composition of the Recyclables or Single Stream Materials. (each a "Material Change"), has the effect of materially altering the terms of this Agreement, or preventing or precluding compliance with one or more provisions of this Agreement, or preventing, precluding or substantially affecting the benefit(s) bargained for under this Agreement, including profits of Company, this Agreement shall be modified or suspended as may be necessary to comply with, ameliorate, or prevent the detrimental effects on the Agreement of, such Material Change. A Party detrimentally affected by a Material Change shall so notify the other Party and request amendment to this Agreement accordingly, and the Parties shall engage in good faith negotiations for a period of not less than six (6) months after such request regarding such amendments of this Agreement that reflect the extent to which the provisions hereof have been, or should be, so modified or suspended. If a Material Change precludes or reduces any of Company's rates or other revenues, then the Parties shall modify this Agreement in accordance with this provision in order that Company can achieve, on an ongoing basis, profits that existed immediately prior to the change in Applicable Law.

**11. TERMINATION**

When a Party has defaulted on one or more material terms of this Agreement, the non-defaulting Party may terminate this Agreement on thirty (30) days' notice where such default has not been cured within such thirty (30) day period.

**12. NOTICES:**

Any notice to be given hereunder shall be sent via certified mail or a nationally-recognized overnight courier to the addresses respectively set forth above for each Party, and in the case of Company, a copy shall be sent to WM Recycle America, L.L.C., 1001 Fannin, Suite 4000, Houston, TX 77002, Attn: President, and to WM Recycle America, L.L.C., 4600 N Port Washington Rd. Milwaukee, WI 53212, Attn: Law Department. In the case of Customer, a copy shall be sent to: City of Fort Dodge, 3001 8th Ave South, Fort Dodge, IA 50501, Attn: Director, Public Works.

**13. OTHER PURCHASES**

From time to time, Customer and Company may mutually agree on additional purchases or services, provided these do not conflict with Applicable Law. The terms and conditions in this Agreement may be used for these additional purchases and services and such changes to the Agreement will be approved and appended hereto. Such additional purchases and services may include, but are not limited to, additional solid waste and recycling services, including collection, disposal, transfer, organics management, disaster services, trucking, project management, and construction.

**14. MISCELLANEOUS:**

a. Except for the obligation to make payments hereunder, neither party shall be in default for its failure to perform or delay in performance caused by an Uncontrollable Circumstance(s), and the affected party shall be excused from performance during the occurrence of such events.

b. This Agreement shall be binding on and shall inure to the benefit of the parties hereto and their respective successors and assigns.

c. This Agreement, including Exhibits A, B and C, which are incorporated herein and made a part hereof, represents the entire agreement between the parties and supersedes any and all other agreements related to the Recyclables, whether written or oral, that may exist between the Parties or their affiliates.

d. This Agreement shall be construed in accordance with the law of the state in which this Agreement is performed.

e. If any provision of this Agreement is declared invalid or unenforceable, then such provision shall be severed from and shall not affect the remainder of this Agreement; however, the Parties shall amend this Agreement to give effect, to the maximum extent allowed, to the intent and meaning of the severed provision.

f. Any waiver of any breach of covenants herein contained to be kept and performed by the either Party shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent a Party from declaring a forfeiture for any succeeding breach either of the same condition of covenant or otherwise. A Party's remedies hereunder are not exclusive and are in addition to any other remedies at law or in equity. A Party shall not be deemed to waive any remedy available to it or any right under this Agreement, at law or in equity, by virtue of any act or forbearance in enforcing such rights or remedies.

g. Any additions or modifications to this Agreement shall only be made in writing and signed by both Parties.

h. This Agreement shall not be construed to create any rights hereunder in any person or entity other than the Parties to this Agreement.

i. Each party has cooperated in the drafting and preparation of this Agreement and/or has had the opportunity to consult with counsel in regards to its terms and conditions. Hence, in any construction or interpretation of this Agreement, the same shall not be construed against any party.

BY SIGNING BELOW, EACH SIGNATORY WARRANTS THAT HE OR SHE IS AUTHORIZED TO ENTER INTO A BINDING AGREEMENT ON BEHALF OF THE PARTY SET FORTH.

**CITY OF FORT DODGE, IOWA**  
"Customer"

**WM RECYCLE AMERICA, L.L.C.**  
"Company"

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**  
**SPECIFICATIONS**

**RECYCLABLES** shall be loose, not bagged, and includes the following:

Aluminum food and beverage containers - empty	Glass food and beverage containers – brown, clear, or green - empty
Ferrous (Iron) cans – empty	PET plastic containers with the symbol #1 – with screw tops only - empty
HDPE natural plastic containers with the symbol #2 (milk and water bottles) – empty	HDPE pigmented plastic containers with the symbol #2 (detergent, shampoo bottles, etc.) - empty
Plastics with symbols #3, #4, #5, #6, #7 – empty	Newsprint
Old corrugated containers	Magazines, glossy inserts and pamphlets
Catalogs	Cereal boxes; detergent, gift and snack boxes
Telephone books	Printer paper
Copier paper	Mail
All other office paper without wax liners	

Recyclables may be added or deleted upon mutual consent of the Parties.

**RECYCLABLES do not include the following:**

Bagged materials (even if containing Recyclables)	Microwave trays
Mirrors	Window or auto glass
Light Bulbs	Ceramics
Porcelain	Plastics unnumbered
Plastic bags and film	Coat hangers
Glass cookware/bakeware	Household items such as cooking pots, toasters, etc.
Flexible packaging and multi-laminated materials	Wet fiber
Excluded Materials	Fiber containing, or that has been in contact with, food debris
Any recyclable materials, or pieces of recyclable materials, less than 2" in size in any dimension	Materials: (a) that contain chemical or other properties deleterious, or capable of causing material damage, to any part of Company's property, its personnel or the public; and/or (b) that may materially impair the strength or the durability of the Company's structures or equipment.

**DELIVERY SPECIFICATIONS:**

Single Stream Materials delivered by or on behalf of Customer may not contain a percentage of Non-Recyclables greater than the Maximum Non-Recyclables Level.

In the event a load of Single Stream Materials does not meet Specifications, the load may be rejected and/or Customer may be charged additional processing, return or disposal costs.

**3. CHARGES**

(a) Customer shall pay the Company Fee for each Ton of Single Stream Materials delivered by or on behalf of the Customer. The initial Company Fee is Sixty-five Dollars per Ton (\$65/Ton). The Company Fee shall be increased as calculated below on the anniversary of the Effective Date ("Anniversary Date") and such increase shall be effective on such Anniversary Date and shall be recalculated and effective each Anniversary Date thereafter. Failure by Company to submit such CPI price adjustment shall not preclude the implementation of such adjustment as of the Anniversary Date. Increases to the Company Fee shall be in proportion to the increase in the CPI for the twelve (12) months ending one month prior to the Anniversary Date. In the event the CPI is no longer viable or no longer reflective of consumer prices in Customer's geographic region, another consumer pricing index or method of adjustment may be used as a replacement for the CPI, subject to the mutual consent of the Parties.

(b) A per Ton environmental fee will be paid by Customer calculated as set forth at <http://www.recycleamerica.com/fuel/default.asp>.

**4. BLENDED VALUE/REVENUE SHARE /NET VALUE EXAMPLE**

By way of example, the following is a calculation of Blended Value and Net Value:

Blended Value Per Ton				
A	B	C	D	E
Material Component	Commodity Value	Value (Example) In \$/Ton*	Composition Audit Percentage (Example)	Blended Value Contribution C*D (Example) \$/Ton
Newspapers, magazines and inserts	PPW ONP #8	\$55.00	44.25%	\$24.34
Cardboard, and brown papers	PPW OCC #11	\$90.00	11.88%	10.69
Mixed Paper	PPW #2 Mixed Paper	\$40.00	19.38%	\$7.75
Aluminum / beverage cans	SMP for Aluminum Cans (Loose, ¢/lb, delivered)	\$1,350.00	.1%	\$1.35
Steel/Tin	SMP for Steel Cans (Sorted, Densified, (\$/Ton delivered)	\$115.00	2.49%	\$2.86
Plastic #1	SMP for PET (baled, ¢/lb, picked up)	\$330.00	3.1%	\$10.23
Plastic #2 Natural	SMP for Natural HDPE ((baled, ¢/lb, picked up)	\$720.00	2.00%	\$14.40
Plastic #2 Colored	SMP for Colored HDPE ((baled, ¢/lb, picked up)	\$535.00	1.31%	\$7.01
#3-#7 Plastics	Actual Value	\$0	1.10%	\$0
Rigid Plastics	Actual Value	\$0	-	\$0
Glass	Actual Value	(\$36.00)	6.89%	(\$2.48)
Residue	T & D	(\$56.50)	7.5%	(\$4.24)
<b>Total</b>	<b>Blended Value</b>		<b>100%</b>	<b>\$71.92</b>

\*Commodity Value expressed as cents per pound (¢/lb) is multiplied by 20 to obtain dollar value per Ton (\$/Ton).

**5. NET VALUE [USE REALISTIC EXAMPLE UTILIZING ACTUAL NUMBERS FROM ABOVE.]**

By way of example (from above), where the:

- a. Blended Value is \$71.92 per Ton, for each Ton delivered; and
- b. the Customer's Value Share is 95%; and
- c. the Company Fee is \$65.00 per Ton, for each Ton delivered; and
- d. the Environmental Fee is \$1.25 per Ton, for each Ton delivered;

the Net Value per Ton, for each Ton delivered, paid to Customer is:

$$95\% \times \$71.91 = \$68.31 \text{ Value Share}$$

$$\$68.31 - \$65.00 - \$1.25 = \$2.06 \text{ Net Value per Ton, for each Ton delivered, paid by Company to Customer}$$

By way of a second example, where the:

- a. Blended Value is \$65.00 per Ton, for each Ton delivered; and
- b. the Customer's Value Share is 95%; and
- c. the Company Fee is \$65.00 per Ton, for each Ton delivered; and
- d. the Environmental Fee is \$1.25 per Ton, for each Ton delivered;

the Net Value per Ton, for each Ton delivered, paid to Company is:

$$95\% \times \$65.00 = \$61.75 \text{ Value Share}$$

$$\$61.75 - \$65.00 - \$1.25 = (\$4.50) \text{ Net Value per Ton, for each Ton delivered, paid by Customer to Company}$$