

**CONTRACT FOR COLLECTION AND TRANSPORTATION  
OF RESIDENTIAL SOLID WASTE AND SINGLE SORT RECYCLING FOR THE CITY OF INDEPENDENCE, IA**

This Contract for Collection, Transportation and Processing of Residential Solid Waste and Single-Sort Recycling for the City of Independence, IA (the "Agreement") is entered into on July 1, 2020 (the "Effective Date"), by and between the City of Independence, a municipal corporation created under the laws of the State of Iowa ("City"), and Waste Management of Iowa, Inc. ("WM"), a Iowa corporation.

**Recitals**

- A. The City desires to provide its citizens with environmentally sound nonhazardous solid waste collection and disposal and single-sort recycling collection and processing services ("Services");
- B. WM and its affiliates have extensive experience in providing the Services;
- C. The City has determined that it would be in the best interests of its citizens to contract with WM for the Services according to the terms and conditions contained herein.

**Agreements**

**I. DEFINITIONS**

- a. Recyclables or Recyclable Materials – shall mean those materials defined in Exhibit A. Title to Recyclable Materials shall transfer to WM upon collection in WM vehicles.
- b. Residential Unit – shall mean a dwelling within the corporate limits of the City. Apartment or condominium buildings with four (4) or more individual dwellings shall not be considered Residential Units.
- c. Acceptable Waste- Shall mean all nonhazardous solid waste generated by households in the ordinary course including food wastes and discarded papers, cardboard, plastics, cloth, glass and metal materials, but excluding Excluded Waste as defined herein. As used herein, the term "waste" shall mean Acceptable Waste unless the context demonstrates otherwise. Title to Acceptable Waste shall transfer to WM upon collection in WM vehicles.
- d. Excluded Waste- Shall mean, without limitation, any regulated quantity of Hazardous Waste or Hazardous Substance as defined by federal, state or local laws or regulations; containerized wastes, the contents of which are unable to be identified; sludges; waste from a pollution control process or cleanup of a spill of a chemical substance or commercial product; waste tires; biohazards or regulated medical waste; friable asbestos; construction or demolition waste; soil, sod, tree branches and stumps; paint; motor oil; excessive storm debris or debris resulting from weather events such as tornados or severe storms; or any item too large or heavy to be contained within the toter provided. Title to and liability for Excluded Waste shall remain with the resident that generated the Excluded Waste at all times.

**II. TERM**

The Term of this Agreement shall be for Five (5) years commencing on July 1, 2020 ("Commencement Date") and expiring June 30, 2025. Upon termination of this Agreement, the Agreement shall be automatically renewed on a year-to-year basis unless ninety (90) days prior to the termination hereof, or any subsequent one-year renewal, either party shall tender the other party written notice of its intention not to renew.

### III. SERVICES

a. WM shall furnish, at its sole cost and expense, the labor, equipment, licenses, permits, and other requirements necessary to provide Services to all residential units in the City. As part of the Services, WM shall:

i. Toter Supply. Each Residential Unit will be provided their choice of 32, 64 or 96-gallon toters for Acceptable Solid Waste, and a 64- gallon toter for Recyclable Materials. The toters and equipment WM may furnish residents and the City shall remain WM's property. One additional 64-gallon recycling toter or an upgrade of the recycling toter to a 96-gallon recycling toter will be at no charge to the City or its residents.

ii. Acceptable Solid Waste and Recycling Materials Collection, Frequency, Days and Times. Acceptable Solid Waste Materials shall be collected 1 time per week from each Residential Unit on a weekday. Recycling Materials shall be collected 1 time every other week, subject to the terms and conditions in Exhibit A. Collections shall occur during ordinary business hours but in no instance earlier than 7 am. All toters must be placed at the curb for collection no later than 7:00 A.M. on the scheduled day of collection.

iii. Exclusions from the Service – Notwithstanding anything to the contrary herein, the Service shall not include yard waste collection, bulk or white goods collection, construction or demolition waste collection. Exclusive services shall not be provided to commercial establishments under this Agreement. Commercial businesses shall be contracted with and billed directly by WM.

iv. Transportation and Processing. WM shall transport Recycling Materials to a Materials Recovery Facility (MRF), which processes single-sort recycling materials. The MRF will be licensed and permitted to accept such recyclable materials. WM shall dispose or arrange to dispose of the Acceptable Solid Waste collected under this Agreement only at Buchanan County Transfer Station.

v. Holiday Schedule. The following shall be designated holidays on which the Services shall not be provided: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day. If a designated holiday falls on or before a regularly scheduled Service day, the Services will be performed on the next day.

vi. Toter Replacement. WM shall replace at no charge to the City or Residential Unit any toter that becomes damaged or destroyed during the provision of the Services, or that becomes unusable because of ordinary wear and tear. However, if a toter is lost, stolen, damaged, or destroyed through no fault of WM, the Residential Unit shall be responsible to compensate WM the fair market value for the replacement of such toter. Each Residential Unit shall be billed separately for such replacement cost.

b. Compliance with Laws. The Services shall be performed in accordance with all applicable statutes, laws, rules, regulations and ordinances.

c. Personnel and Equipment. The Services shall be performed by properly trained and licensed personnel in adequate numbers and with adequate vehicles and equipment to complete the Services in a safe and timely manner.

d. Complaints and Missed Pick-Ups. All complaints as to WM's provision of the Services, including alleged missed pick-ups, shall be given prompt and courteous attention. WM shall attempt to resolve all complaints promptly, and shall cure all missed pick-ups that are not the result of *force majeure* events.

e. Anti-Discrimination. In performing the Service, WM shall not discriminate against any person on the basis of race, religion, sex, national origin, political affiliation, or physical and mental disability.

f. Exclusive. The City grants the exclusive right to perform the residential Services set forth in this Agreement. The City agrees to not allow anyone other than WM to engage in the collection of Residential Waste or Recyclables collection within the City.

G. Special Services. The City may contract with WM for an annual City-Wide Cleanup.

The following City owned properties will be serviced for free:

- Independence Street Department
- Veterans Park
- Independence Fire Department
- Independence Library

WM shall provide up to two (2) 6-yard recycling containers at the Buchanan County Transfer Station to be used by City residents for overflow recycling, no commercial recycling will be allowed. These containers shall be monitored for compliance by the City in accordance with Exhibit A of this Agreement.

#### IV. COLLECTION POINTS AND ADJUSTMENTS

The Residential Unit count at the commencement of this Agreement hereunder shall be 2,453 Residential Units requiring totter service. Prior to the initial billing, WM and the City reserve the right to verify the number of Residential Units. At any point during the duration of the Agreement, either party may ask for an audit of the total number of Residential Units.

#### V. FEES AND PAYMENTS

a. Service Fee per Residential Unit. The monthly fees to be paid by the City to WM hereunder are based on the collection of one (1) Acceptable Solid Waste totter and one (1) Recyclable Materials totter per Residential Unit, placed at the curbside, at the frequency identified in this Agreement. The fees for Services per Residential Unit, per month, are as follows:

32-gallon senior trash- \$13.00

32-gallon trash- \$14.64

64-gallon trash- \$15.87

96-gallon trash- \$17.18

All rates include single sort recycling picked up on an every other week in 64-gallon carts provided by WM.

The monthly fee per Residential Unit paid to WM by the City shall be calculated based upon the current solid waste service level. Prices given shall remain fixed for the first (12) months from the Commencement Date.

b. Annual Rate Adjustment. Rates shall be adjusted annually on the anniversary date of the commencement of the Agreement. At which time WM will receive an annual rate adjustment of three percent (3%) on July 1, of each succeeding year of the Agreement.

c. Invoices and Payment. Invoices shall be submitted to the City by WM on a monthly basis. The City shall have thirty (30) days from the invoice date to remit payment in full. Payment by the City shall be made by check or wire transfer or ACH debit. The maximum interest permitted by law shall be applied to balances due and unpaid after more than thirty (30) days beyond the due date.

d. Changes in Law. Notwithstanding anything to the contrary in this Agreement, WM shall be entitled to pass through to, and collect from, the City any additional collection, transportation or processing costs, taxes, or surcharges incurred by WM as a result of any mandated changes in local, state or federal laws or regulations governing the generation, collection, transportation and processing of solid waste or recyclables or costs due to uncontrollable circumstances, including, without limitation, imposition of taxes, fees or surcharges or acts of God such as floods, fires, hurricanes and natural disasters.

e. Fuel Table. All service fees are subject to a monthly fuel surcharge when diesel fuel reaches a price of \$4.00 per gallon (see table below).

Diesel Fuel Price per Gallon	Fuel Surcharge
<\$4.00	0 Percent
\$4.00 to \$4.24	2 Percent
\$4.25 to \$4.49	3 Percent
\$4.50 to \$4.74	4 Percent
For each additional \$0.25 the fuel surcharge will increase by 1 Percent	

The published index for determining monthly diesel fuel prices will be the Department of Energy's (DOE) "Weekly Retail On-Highway Diesel Prices" for the Midwest region. The price published for the first Monday of the month will be used as that month's diesel fuel price. The prices can be viewed at the DOE's website: <http://www.eia.gov/petroleum/gasdiesel/>.

#### VI. DEFAULT AND TERMINATION

Except as otherwise provided in the *Force Majeure* provision of this Agreement, the failure of either Party to perform a material obligation under this Agreement shall be considered a breach of this Agreement, and the breaching Party shall be in default. In the event of default, the non-defaulting Party shall give written notice of the default, and the defaulting Party shall have: (i) ten (10) days from the receipt of the notice to cure any failure to pay money under this Agreement, or (ii) thirty (30) days from the receipt of the notice to cure any other default under this Agreement. If the defaulting Party fails to cure the breach within the allotted time, the non-defaulting Party may, at its option, immediately terminate the Agreement. In the event of a default, the defaulting Party agrees to pay all damages caused by said default, to include, without limitation reasonable attorneys' fees and costs associated with enforcement of this Agreement. Under no circumstances shall the Parties be liable for any consequential, indirect, punitive or special damages for any alleged default under this Agreement.

#### VII. FORCE MAJEURE

WM's performance of the Service may be suspended and its obligations hereunder excused during the pendency of a cause or causes beyond its reasonable control, such as by way of example and not limitation: acts of war, public enemy, civil disturbance, riot or disorder; epidemic or pandemic; acts of God such as landslide, lightning, earthquake, fire, storm, the impending approach of a storm, or flood; explosion; restraining orders, interference by civil or military authorities, strike, statute, ordinance, government order or ruling; or other similar causes. In the event of an occurrence of a *force majeure* event, WM shall notify the City immediately, in writing, describing the particulars of the circumstances preventing performance of the Service and its expected duration. Notice shall be provided after the effect of such occurrence has ceased.

#### VIII. INDEMNIFICATION

a. The City agrees to indemnify, defend, and hold WM harmless from and against all claims and actions, suits, debts, damages, liabilities and costs whatsoever, including but not limited to attorneys' fees and costs of defense, based upon or arising out of the City's breach of this Agreement, and based upon or arising out of any injuries (including death) to persons, or damage to property, to the extent

caused in whole or in part by the negligent acts or omissions of the City, its Residents, or any of its directors, officers, employees, agents, or subcontractors, in the performance of this Agreement.

b. WM agrees to indemnify, defend, and hold the City harmless from and against all claims and actions, suits, debts, damages, liabilities and costs whatsoever, including but not limited to attorneys' fees and costs of defense, based upon or arising out of the breach of this Agreement, and based upon or arising out of any injuries (including death) to persons, or damage to property, to the extent caused in whole or in part by the negligent acts or omissions of WM, or any of its directors, officers, employees, agents, or subcontractors, in the performance of this Agreement.

c. Notwithstanding any provisions to the contrary, WM shall not be responsible for any damage to pavement or curbing that is the result of ordinary wear and tear during the performance of the Service.

d. The indemnification obligations of this section shall survive the termination or expiration of this Agreement for any reason.

#### IX. MISCELLANEOUS PROVISIONS

a. Independent Contractor. WM shall perform the Service as an independent contractor. WM, its officers, employees, agents, contractors or subcontractors, are not and shall not be considered employees, agents or servants of the City for any purpose whatsoever under this Agreement or otherwise. WM at all times shall have exclusive control of the performance of the Service. Nothing in this Agreement shall be construed to give the City any right or duty to supervise or control WM, its officers, employees, agents, contractors, or subcontractors, nor to determine the manner in which WM shall perform its obligations under the Agreement.

b. Amendments. No amendment to this Agreement shall be made except upon the written consent of both Parties.

c. Insurance. WM shall maintain, at its own cost and expense, adequate insurance policies from licensed carriers covering the Services, including, but not limited to, Commercial General Liability and Commercial Automobile Liability policies.

d. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the Parties hereto with respect to the subject matter and supersedes any prior and contemporaneous agreements and understandings, express or implied.

e. Waiver. A waiver by either Party of any breach of any provision hereof shall not be taken or held to be a waiver of any subsequent breach, whether similar or dissimilar, or as a waiver of any provision itself. No payment or acceptance of compensation for any period subsequent to any breach shall be deemed a waiver of any right or acceptance of defective performance.

f. Severance. In the event that any provision of this Agreement is found by a court of competent jurisdiction to be void, invalid, or unenforceable, the balance of this Agreement shall remain in effect and binding on the Parties.

g. Choice of Law. This Agreement shall be governed by the state of Iowa law, without regard to choice of law rules.

h. Assignment. Neither Party may assign its rights and obligations under this Agreement without the prior written consent of the other Party, except that WM may assign its rights and obligations under this Agreement to any WM affiliate without the City's consent. An assignment shall not relieve the assignee of any obligations under this Agreement.

i. Notice. All notices required or permitted under this Agreement shall be in writing and shall be personally delivered, sent by certified mail, return receipt requested, or by overnight courier, with copies to counsel for the respective Parties.

IN WITNESS THEREOF, the parties have executed this Agreement as of the Effective Date indicated above.

**Waste Management of Minnesota, Inc.**

**City of Independence, Iowa**

Signature: Chuck Rynda  
Printed  
Name: Chuck Rynda  
Title: VP/ Area Controller

Signature: Bonita Davis  
Printed  
Name: BONITA DAVIS  
Title: MAYOR

## Exhibit A

The list of items below represents the current materials currently being accepted by WM as Recyclables. This list may expand or contract due to market conditions.

Acceptable Recyclables ("Recyclables")	Unacceptable Materials
Aluminum food and beverage containers (cans)	Microwave trays
Glass food and beverage containers – brown, clear, or green	Mirrors Window or auto glass
Ferrous (Iron) cans PET plastic containers with the symbol #1 – with screw tops only, with caps left on container	Light Bulbs
HDPE natural plastic containers with the symbol #2 – (milk and water bottles)	Ceramics, Porcelain
HDPE pigmented plastic containers with the symbol #2, without caps (detergent, shampoo bottles, etc.)	Scrap metal
Plastics with symbols #3, #4, #5, #6, #7-narrow and screw top containers—with caps left on	Plastics unnumbered
Newsprint and inserts, envelopes	Plastic bags, plastic films, plastic wrap, miscellaneous scrap plastic
Old corrugated cardboard (flattened)	Coat hangers, garden hose
Magazines and Mail	Glass cookware/bakeware
Catalogs and Telephone books	Household items such as cooking pots, toasters, etc.
Cereal boxes	Foam Cups and Containers
Printer paper and copier paper	Electronics, Batteries, household hazardous waste
All other office paper without wax liners, envelopes	Sharps (needles)
Dairy and juice cartons	*Other items not deemed acceptable

### I. Additional Specifications

- a. All glass containers must be empty and free of metal caps and rings and contain less than 5% food debris.
- b. All tin cans, bi-metal cans, and aluminum cans must be empty and contain less than 5% food debris.
- c. All aerosol cans must be empty with less than 5% content
- d. All plastic containers must be empty, caps left on; less than 5% food debris.
- e. All Fiber must be dry and free of food debris and other contaminating material.
- f. Tissues, paper towels or other paper that has been in contact with food is not acceptable.

### II. Recyclables may contain up to 5% Unacceptable Materials, provided however, Recyclables may not:

- a. Materially impair the strength or the durability of the WM's structures or equipment;
- b. Create flammable or explosive conditions in WM's facilities;

- c. Contain dry cell batteries of lead acid batteries;
  - d. Contain chemical or other properties which are deleterious or capable of causing material damage to any part of WM's property, its personnel or the public; or,
  - e. Contain Excluded Waste as defined in the Agreement.
- III. If loads of the mixed recyclables materials do not meet WM's specifications for acceptable recyclables or are otherwise not properly segregated from the waste, WM shall have the right to reject the load in whole or in part, or to handle the contaminated load and impose additional reasonable charges on the City or Resident.
- IV. Upon written notice to the City, WM may discontinue acceptance of any category of recyclable materials as a result of market conditions related to such materials.