



300 E. Locust Street, Suite 100
Des Moines, IA 50309
515-244-0021

REVISED MEMORANDUM

DATE: June 19, 2017

TO: MWA Board Members

CC: MWA Staff

FROM: Michael McCoy, Executive Director

RE: Wednesday, June 21, 2017, Board Meeting

This month's board meeting is scheduled for Wednesday, June 21, 2017, at 5:45 p.m. in the boardroom at Central Office (300 East Locust Street, Ste. 100, Des Moines, Iowa). If you have questions about any items listed below, please call me at 323-6535 (w) or 707-3869 (c). I look forward to seeing you on Wednesday.

This memo is revised from the memo included in the Board Packet sent on June 16, 2017, to included Consent Agenda Items 9 & 10.

The following numbered items correspond with the number of the item on the agenda:

Consent Agenda Item 9 & 10

9. Resolution 06-17-04 – Approval of Compost It! Bag Warehouse & Delivery Agreement – Action for Approval

The Compost It! yard waste warehousing and delivery contract with Sink Paper and Packaging is up for renewal June 30, 2016. The renewal price will remain the same at \$2.44 per case at the point of delivery. Staff recommends renewing the contract for another year. The renewal agreement is attached.

10. Resolution 06-17-05 – Approval of Revenue Sharing Agreement with Respect to Solid Waste Collection – Action for Approval

For those communities where MWA manages their solid waste collection contracts, large and extra item stickers allow residents to dispose of extra trash, bulky items and appliances at the curb. The revenue from the sale of these stickers is divided among the contracted haulers. The revenue sharing contract for collection of solid waste is up for renewal June 30, 2016. The contract is addressed annually to determine if there is significant growth in a community where adjustments need to be made. The FY 17-18 contract remains unchanged other than the addition of one new retailer. The renewal agreement is attached.

**FIFTH EXTENSION OF
METRO WASTE AUTHORITY AGREEMENT FOR WAREHOUSING AND DELIVERY OF
COMPOST IT! YARD WASTE BAGS**

This FIFTH EXTENSION OF METRO WASTE AUTHORITY AGREEMENT FOR WAREHOUSING AND DELIVERY OF COMPOST IT! YARD WASTE BAGS (this "Fifth Extension Agreement") is entered into this 21 day of June 2017, by and between **Metro Waste Authority**, a joint powers entity organized pursuant to Chapter 28E of the Iowa Code ("MWA"), and **Sink Paper & Packaging Co.**, an Iowa corporation ("Company").

RECITALS

- A. On or around July 1, 2012, MWA and Company entered into that certain Metro Waste Authority Agreement for Warehousing and Delivery of Compost It! Yard Waste Bags (the "Original Agreement").
- B. On or around July 1, 2013, Company and MWA entered into that certain Extension and Amendment of Metro Waste Authority Agreement for Warehousing and Delivery of Compost It! Yard Waste Bags (the "First Extension Agreement"), whereby the parties agreed to (i) extend the term of the Original Agreement and (ii) amend the Original Agreement with respect to the price of yard waste bag cases. The "Second Extension Agreement," "Third Extension Agreement" and "Fourth Extension Agreement" were entered under the same terms on or around July 1 each year.
- C. Pursuant to Paragraph 1 of the First Extension Agreement, the term of the Original Agreement ended on June 30, 2014.
- D. Pursuant to Section VI of the Original Agreement, the Original Agreement may be extended from year to year upon mutual agreement of the parties.
- E. Both MWA and Company desire to extend the term of the Original Agreement, pursuant to the terms set forth herein.

AGREEMENT

In consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. Extension of Original Agreement. MWA and Company hereby agree that the Original Agreement shall be extended through June 30, 2018, on and subject to the same terms and conditions as set forth in the Original Agreement, as amended by the First Extension Agreement.

2. Compensation will Decrease. MWA and Company hereby agree that based on **Section V. COMPENSATION**, as amended pursuant to the First Extension Agreement, the cost

per case will decrease. MWA will pay to Company a fee of \$2.44 per case for all yard waste bag cases distributed by Company to MWA retailers as full compensation for all services provided by Company under this contract. The sole exception to this fee structure is the special fee paid for Rush Orders, as defined in Section III. For Rush Orders, MWA will pay Company a special fee of \$35 per Rush Order.”

3. Original Agreement. Except as amended in the First, Second, Third and Fourth Extension, and this Fifth Extension Agreement (together, the “Extension Agreements”), the Original Agreement and the terms of it shall continue in full force and effect. In the event of a conflict between the provisions of the Original Agreement, and the Extension Agreements, the provisions of this Fifth Extension Agreement shall prevail.

4. Counterparts. This Fifth Extension Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

5. Severability. If any provision of this Fifth Extension Agreement is for any reason held to be illegal or invalid, such illegality or invalidity shall not affect any other provision entered into, each of which shall be construed and enforced as if such illegal or invalid portion were not contained herein. Nor shall any such illegality or invalidity affect any legal or valid application thereof, and each such provision shall be deemed to be effective in the manner and to the full extent permitted by law.

6. Governing Law. The Extension Agreements and the Original Agreement shall be governed exclusively by and construed in accordance with the laws of the State of Iowa.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK; SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, we, the undersigned, by our duly authorized agents, affix our signatures as of the date first written above.

MWA:

METRO WASTE AUTHORITY

By: _____
Michael McCoy, Executive Director

COMPANY:

SINK PAPER & PACKAGING CO.

By: _____
Austin Krusenstjerna, Purchasing Manager

AGREEMENT FOR REVENUE SHARING WITH RESPECT TO THE COLLECTION OF SOLID WASTE

This AGREEMENT FOR REVENUE SHARING WITH RESPECT TO THE COLLECTION OF SOLID WASTE (this "Agreement") is made and entered into this 21st day of June 2017, by and among **Metro Waste Authority**, a joint powers entity organized pursuant to Chapter 28E of the Iowa Code ("MWA"), **Waste Connections of Iowa, Inc.**, an Iowa corporation ("WCI"), **Waste Management of Iowa, Inc.**, an Iowa corporation ("WMI") and **Ankeny Sanitation, Inc.**, an Iowa corporation ("ASI").

RECITALS

- A. On or around June 16, 2010, MWA and WCI entered into a certain Agreement for the Collection of Solid Waste (the "WCI Agreement"), whereby WCI agreed to provide solid waste collection services for certain residents within the MWA Service Area (as defined therein) of Participating Member Communities (as defined therein).
- B. On or around March 16, 2011, MWA and WMI entered into a certain Agreement for the Collection of Solid Waste (the "WMI Agreement"), whereby WMI agreed to provide solid waste collection services for certain residents within the MWA Service Area (as defined therein) of Participating Member Communities (as defined therein).
- C. On or around December 10, 2012, MWA and ASI entered into a certain Agreement for the Collection of Solid Waste (the "ASI Agreement"; together with the WCI Agreement and the WMI Agreement, the "Collection Agreements"), whereby ASI agreed to provide solid waste collection services for certain residents within the MWA Service Area (as defined therein) of Participating Member Communities (as defined therein).
- D. In accordance with Section 7.3.7 of each of the Collection Agreements, each of WCI, WMI and ASI (collectively, the "Contractors") have agreed to collect Appliance (as defined in the Collection Agreements) and Bulky Waste Collection (as defined in the Collection Agreements) pursuant to certain requirements and compensation as mores specifically set forth therein.
- E. MWA and each Contractor hereby desire to enter into this Agreement in order to set forth the revenue sharing by and among MWA and each Contractor for the collection of Appliances and Bulky Waste Collection.

AGREEMENT

In consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. Defined Terms. Terms not otherwise defined herein shall have the definition as set forth in the Collection Agreements.

2. Collection Agreements. Each of the parties hereto agrees and acknowledges that each of the Collection Agreements and the terms of them shall continue in full force and effect. In the event of a conflict between the provisions of the any of the Collection Agreements and this Agreement, the provisions of such Collection Agreement shall prevail.

3. Term. This Agreement shall be effective July 1, 2017 through June 30, 2018. This Agreement may be mutually extended from year to year upon written agreement of the parties.

4. Section 7.3.7 of the Collection Agreements. Each of the parties hereto agrees and acknowledges that it has agreed to the following provision in Collection Agreement (“Section 7.3.7”):

“7.3.7 Separate Bulky Waste/Appliance Collection Charges

The cost to households for Bulky Waste collection will be \$1 for an extra bag or box that does not fit in the cart and \$5 for all Bulky Waste items that do not fit in the cart. Appliances will cost households \$35 each. MWA will sell Bulky Waste stickers to residents of the Participating Member Communities as follows:

- ◆ One extra bag or box sticker = \$ 1.00
- ◆ Bulky Waste item sticker = \$ 5.00

The extra bag must have a capacity no greater than thirty-five (35) gallons or equivalent size box. An appliance must have a total of seven (7) \$5 Bulky Waste item stickers applied.

MWA will retain issuance fees of \$0.10 for each \$1.00 sticker and \$0.20 for each \$5.00 sticker sold for the provision of the stickers and administration. Contractor will be paid the remaining sticker revenue received by MWA on a quarterly basis to cover the cost to the Contractor for the collection and disposal of the Bulky Wastes and Appliances. Contractor will be paid based on the revenue as received by MWA which may be prior to the actual service being used by households. Sticker fees and revenue to the Contractor will not be subject to adjustment and will remain the same throughout the Agreement term and any extensions.”

5. Revenue/Revenue Sharing. As a result of the Bulky Waste Collection and Appliance collection as set forth in Section 7.3.7, MWA will pay each Contractor, after retention of the issuance fees by MWA as set forth in Section 7.3.7, the remaining sticker revenue received by MWA on a quarterly basis to cover the cost to Contractors for the Bulky Waste Collection and

Appliance collection (the "Revenue"). MWA and each Contractor hereby agree that the Revenue shall be divided and distributed among each Contractor in accordance with the distribution as set forth in Exhibit A attached hereto. MWA and each Contractor hereby agree and acknowledge that the distribution as set forth in Exhibit A is a fair, true and accurate distribution of the Revenue among the Contractors.

6. Default. In the event that any party determines that another party has defaulted in the performance of its obligations hereunder, the aggrieved party may declare that default has occurred and give notice thereof to the defaulting party. Notice of default shall be given in writing, shall specify the nature of the default and the provision of this Agreement involved, and shall specify what action is required of the defaulting party to correct the default. The defaulting party shall have thirty (30) days from the date of its receipt of the notice of default to correct the default. If at the end of said thirty (30) day period the default has not, in the opinion of the aggrieved party, been corrected, that party may thereupon take whatever action it determined is necessary or appropriate to enforce or obtain performance of the provisions of this Agreement.

7. Notices. All notices, consents, approvals, communications, and requests of or to any of the parties to this Agreement shall be writing, delivered to the person designated below, by United State mail or in hand delivery, at the indicated address unless otherwise designated in writing.

For MWA:

Name: Michael McCoy
Title: Executive Director
Address: 300 East Locust St., Ste 100
City, State: Des Moines, IA 50309

For WMI:

Name: Ammon Taylor
Title: Municipal Marketing Manager
Address: 201 SE 18th St.
City, State: Des Moines, IA 50317

For WCI:

Name: Mark Bennett
Title: Divisional Vice President
Address: 4705 NE 22nd St.
City, State: Des Moines, IA 50313

For ASI:

Name: Andrew Larson
Title: Vice President
Address: 221 Southeast Magazine Road
City, State: Ankeny, IA 50021

8. Indemnity. Each Contractor shall indemnify and save harmless MWA, its officers, agents, servants and employees from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, and attorneys' fees to the extent resulting from a willful or negligent act or omission of such Contractor, its officers, agents, servants, and employees in the performance of this Agreement; provided, however, that no Contractor shall be liable for any suits, actions, legal proceedings, claims, demands, damages, costs, expenses and attorneys' fees solely arising out of the willful or negligent act or omission of MWA, its officers, agents servants or employees.

9. Amendments. All provisions of this Agreement shall be strictly complied with and conformed to by Contractors; and no amendment to this Agreement shall be made except upon written consent of the parties, which consent shall not be unreasonably withheld.

10. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

11. Severability. If any provision of this Agreement is for any reason held to be illegal or invalid, such illegality or invalidity shall not affect any other provision entered into, each of which shall be construed and enforced as if such illegal or invalid portion were not contained herein. Nor shall any such illegality or invalidity affect any legal or valid application thereof, and each such provision shall be deemed to be effective in the manner and to the full extent permitted by law.

12. Governing Law. This Agreement shall be governed exclusively by and construed in accordance with the laws of the State of Iowa.

13. Assignment. This Agreement may not be assigned by any party hereto without the express written consent of the other party hereto.

14. Further Assurances. Each party hereby agrees to execute and deliver such additional instruments and documents and to take all such other action as the other party may reasonably request from time to time in order to effect the provisions and purposes of this Agreement.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, we, the undersigned, by our duly authorized agents, affix our signatures as of the date first written above.

METRO WASTE AUTHORITY

By: _____
Name: Michael McCoy
Title: Executive Director

WASTE CONNECTIONS OF IOWA, INC.

By: _____
Name: Mark Bennett
Title: Divisional Vice President

WASTE MANAGEMENT OF IOWA, INC.

By: _____
Name: Carl J. Niemann
Title: Director, Public Sector Solutions

ANKENY SANITATION, INC.

By: _____
Name: Andrew Larson
Title: Vice President

Exhibit A

Fiscal Year 2017-2018 Quarterly Revenue Share for MWA by and among Waste Connections of Iowa, Inc., Ankeny Sanitation, Inc. and Waste Management of Iowa, Inc.

100% OF REVENUE TO WASTE CONNECTIONS OF IOWA, INC.

Cappel's Ace Hardware – 245 50th ST
 HY-VEE - 1990 GRAND AVE
 HY-VEE - WEST LAKES, 1725 JORDAN CREEK PKWY
 HY-VEE - MILLS CIVIC, 555 S 51ST ST
 HY-VEE DRUGSTORE - 1010 60TH ST
 HY-VEE - 1700 VALLEY WEST DR
 HY-VEE – 1005 E. HICKMAN ROAD
 CITY OF WEST DES MOINES

100% OF REVENUE TO ANKENY SANITATION, INC.

Cappel's Ace Hardware – 112 SUNSET DR
 HY-VEE - WINDSOR HEIGHTS, 7101 UNIVERSITY AVE
 CITY OF WINDSOR HEIGHTS
 CITY OF NORWALK

86% OF REVENUE TO WASTE MANGEMENT OF IOWA, INC.; 14% OF REVENUE TO ANKENY SANITATION, INC.

HY-VEE - ALTOONA, 108 8TH ST SW
 HY-VEE - PLEASANT HILL, 4815 MAPLE DR
 BRICK STREET MARKET AND CAFÉ, 114 BRICK ST SE, BONDURANT
 CITY OF ALTOONA
 CITY OF PLEASANT HILL
 CITY OF RUNNELLS
 CITY OF BONDURANT
 CITY OF MITCHELLVILLE

85% OF REVENUE TO WASTE CONNECTIONS OF IOWA, INC.; 15% OF REVENUE TO ANKENY SANITATION, INC.

TRUE VALUE – WEST DES MOINES, 100 GRAND AVE
 FAREWAY – WEST DES MOINES, 329 GRAND AVE