

SECOND AMENDATORY AGREEMENT

THIS SECOND AMENDATORY AGREEMENT is made by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”), and **WM Recycle America, L.L.C.**, a Delaware corporation, being a wholly owned subsidiary of Waste Management, Inc. a Delaware corporation, and having a principal address of 1001 Fannin, Suite 4000, Houston, Texas 77002, and doing business at 5500 S. Quebec Street, Greenwood Village, Colorado 80111, (“WMRA” or “Contractor”; City and Contractor are collectively referred to as the “parties”).

RECITALS:

A. In response to the City’s request for proposals soliciting recycling and related marketing services, on June 3, 2004 the City awarded a contract to Tri-R Recycling Corporation (“Tri-R”).

B. The effective date of the contract resulting from the award was June 3, 2004.

C. By an asset purchase agreement, Recycle America Alliance, L.L.C (the name of which has been changed to WM Recycle America, L.L.C.) acquired all of the assets of Tri-R as of March 24, 2005, which included the recycling and marketing services contract between Tri-R and the City.

D. By letter dated April 25, 2005, the City indicated that it consented to the assignment of the Agreement from Tri-R to Recycle America Alliance, L.L.C, the latter of which is a wholly owned subsidiary of Waste Management, Inc.

E. Pursuant to the contract, the City commenced delivery of single stream Recyclables on or about June 15, 2005.

F. As provided in the recycling and marketing services contract, by mutual consent, the Agreement could be extended for up to two, five-year periods from the date the City commenced delivery of Recyclables.

G. The parties entered into an Amendatory Agreement dated October 24, 2011 to extend the term and increase funding.

H. The parties wish to further amend the Agreement the agreement to provide for a temporary rate modification due to unforeseen market conditions.

NOW, THEREFORE, the parties hereby agree as follows:

1. Section 6 of the Agreement, entitled “**PAYMENT**,” is amended by deleting it and replacing it with:

“**PAYMENT**: The payment obligations are based on rates and tonnage of Recyclables delivered to the Facilities in accordance with the rates set forth in

Exhibit C and in accordance with **Exhibit B** except during the time period of June 1, 2015 through October 31, 2016. For the time period of June 1, 2015 through October 31, 2016, the payment obligations are based on rates and tonnage of Recyclables delivered to the Facilities in accordance with the rates set forth in **Exhibit D** and in accordance with **Exhibit B**.”

2. **Exhibit D, Temporary Pricing Structure for the Period of June 1, 2015 through October 31, 2016**, is added to the Agreement.
3. The parties hereby agree and acknowledge that no additional pricing adjustments will be authorized during the Term of the Agreement.
4. Except as herein amended, the Agreement is affirmed and ratified in each and every particular.
5. Contractor assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution, or action passed or taken, to enter into the Second Amendatory Agreement. The person or persons signing and executing the Second Amendatory Agreement on behalf of Contractor hereby warrants and guarantees that Contractor has fully authorized he or she or them to execute the Second Amendatory Agreement on behalf of Contractor and to validly and legally bind Contractor to all terms, performances and provisions in the Agreement as amended by the Second Amendatory Agreement set forth herein.

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SIGNATURE PAGES FOLLOW

Contract Control Number:

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

By _____

By _____



Contract Control Number: PWADM-201102838-01

Contractor Name: Waste Management of Colorado

By: 

Name: Scott A. Bradley
(please print)

Title: President
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



EXHIBIT D

Temporary Pricing Structure for the Period of June 1, 2015 through October 31, 2016

Pricing Structure Amendment with WMRA

Adjustment time frame= June 1, 2015 to October 31, 2016.

Pricing structure will be based on the following material composition through October 31, 2016, provided that WMRA shall retain its rights under the agreement in the event residue in a load exceeds 25%:

Grade	Percentage
ONP # 8	22.42%
OCC # 11	22.77%
Mixed Paper	9.73%
Natural HDPE	1.02%
Colored HDPE	1.24%
PET	3.73%
Steel/Tin	2.07%
Aluminum	1.58%
Other Plastic	3.10%
Aseptic/Cartons	0.87%
3 mix Glass	22.88%
Residue	8.59%

Each month WMRA and the City of Denver will review pricing based on the index prices for published at the beginning of each month, retroactive to the first of the month. Below is a table and the appropriate index price.

Publication	Market	Pricing	Material
Pulp & Paper (OBM)	Southwest	ONP # 8 (High Side)	ONP # 8
Pulp & Paper (OBM)	Southwest	OCC # 11 (High Side)	OCC # 11
Pulp & Paper (OBM)	Southwest	Mixed Paper #2 (High Side)	Mixed Paper
Recyclingmarkets.net (SMP)	Pacific NW	Natural HDPE (High Price)	Natural HDPE
Recyclingmarkets.net (SMP)	Pacific NW	Colored HDPE (High Price)	Colored HDPE
Recyclingmarkets.net (SMP)	Pacific NW	PET (High Price)	PET
Recyclingmarkets.net (SMP)	Houston	Steel/Tin (Densified, High Price)	Steel/Tin
Recyclingmarkets.net (SMP)	Pacific NW	Aluminum (Baled, High Price)	Aluminum
Recyclingmarkets.net (SMP)	Los Angeles	Plastics Comingled #3-7 (High Price)	Other Plastic
Pulp & Paper (OBM)	Southwest	Mixed Paper #2 (High Side)	Aseptic/Cartons

Residue will be valued at the per ton rate for disposal and hauling from D&R transfer station. The 2015 price is \$27.73.

Glass will be valued at (\$10) per ton until Momentum Glass begins operating. At that time glass pricing will shift to actual per ton revenue received by WMRA. WMRA will either submit copies of pricing agreement or have Momentum directly communicate its pricing to the City.

After a total per ton net blended value number is generated using the above formula, a \$65 processing fee will be deducted from the total value. The City will then received 60% of the remaining value to be paid on 100% of the tons delivered to the Franklin Street MRF.

Each month WMRA will send the City updated pricing. An email will be directed to the Manager and Recycling Program Manager. Once a confirmation is received from the City the pricing will be effective for that calendar month.

Should market pricing drop significantly the minimum price the City will be paid for its recyclables is \$5/ton even if the above formula falls below that price.

The sample spread sheet will be used to determine each months pricing, and amount to be paid to the City.

Single Stream Pricing Formula for Contract		SAMPLE FOR MAY 2015				
Publication	Market		Grade	Price (High)	Percentage	Value
Pulp & Paper (OBM)	Southwest		ONP # 8	\$55.00	22.42%	\$12.33
Pulp & Paper (OBM)	Southwest		OCC # 11	\$80.00	22.77%	\$18.22
Pulp & Paper (OBM)	Southwest		Mixed Paper	\$50.00	9.73%	\$4.87
Recyclingmarkets.net (SMP)	Pacific NW		Natural HDPE	\$500.00	1.02%	\$5.10
Recyclingmarkets.net (SMP)	Pacific NW		Colored HDPE	\$400.00	1.24%	\$4.96
Recyclingmarkets.net (SMP)	Pacific NW		PET	\$320.00	3.73%	\$11.94
Recyclingmarkets.net (SMP)	Houston		Steel/Tin	\$80.00	2.07%	\$1.66
Recyclingmarkets.net (SMP)	Pacific NW		Aluminum	\$1,340.00	1.58%	\$21.17
Recyclingmarkets.net (SMP)	Los Angeles		Other Plastic	\$60.00	3.10%	\$1.86
			Aseptic/Cartons	\$50.00	0.87%	\$0.44
			3 mix Glass	(\$10.00)	22.88%	(\$2.29)
lowest disposal rate for Dads plus Haul equiv. To D&R			Residue	(\$27.73)	8.59%	(\$2.38)
					100.00%	\$77.86
Rebate/Tip Fee Calculation						
		To Franklin St				
				\$77.86		
				\$ (65.00)		
				\$ 12.86		
					60.0%	
				\$ 7.72	actual paid to the City	
				\$ 5.00	minimum paid if above is less than \$5	
						18528
	Tons delivered by the City			2,400.00		
				\$ 18,528.00	rebate paid on 100% of tons because residue is factored into calculation.	