

1 (SEAL)

2

3 ATTEST:

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8 _____
[Typed name], [City] [Board] Clerk

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13 APPROVED AS TO FORM:

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17 _____
[Typed name], [City] [County] Attorney

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I, _____, [City Clerk] [Board Secretary] of the
[City of] [County of] _____, Iowa, do hereby certify that the
foregoing ORDINANCE was passed and approved by the [City Council of the City of] [Board of
Supervisors of the County of] _____, Iowa, on the
_____ day of _____, 200____, and was published in the
_____, a newspaper of general
circulation in the said [City] [County] of _____ on the
_____ day of _____, 200____.

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Dated this _____ day of _____, 200____.

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33 _____
[City Clerk] [Board Secretary]

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1 TITLE _____, CHAPTER _____, ARTICLE _____, CODE OF
2 ORDINANCES, [CITY] [COUNTY] OF _____,
3 “ORDINANCE TO MINIMIZE FUTURE CONSTRUCTION AND DEMOLITION
4 WASTE”

5
6 Section 1. Findings

- 7 a. On the _____ day of _____, _____, the [City
8 of] [County of] _____ (hereinafter [“city”] [“county”])
9 became a member of the _____ Solid Waste Agency
10 (“Agency”), operating the sanitary disposal project known as
11 _____”the
12 facility” pursuant to a comprehensive plan known as
13 _____ (“the plan”).
- 14 b. Pursuant to the provisions of §455B.301A, Iowa Code, it is the solid waste
15 disposal public policy of the State of Iowa to promote, in descending
16 hierarchy, “...volume reduction at the source, ...recycling and
17 reuse...[and]... other approved techniques of solid waste management
18 including, but not limited to, combustion with energy recovery,
19 combustion for waste disposal, and disposal in sanitary landfills.”
- 20 c. Pursuant to the provisions of §455B.306, Iowa Code, “All cities and
21 counties shall ... establish and implement a comprehensive solid waste
22 reduction program for its residents.”
- 23 d. Pursuant to the provisions of §455B.310, the tonnage fee imposed on the
24 operator of a sanitary landfill by the State of Iowa may be reduced in
25 effect by successful solid waste reduction efforts, and may be eliminated
26 altogether with respect to “Solid waste disposal facilities with special
27 provisions which limit the site to disposal of construction and demolition
28 waste... .”
- 29 e. Construction and demolition waste constitutes a significant portion of the
30 total quantity of solid waste disposed of at the facility, consumes an
31 inordinate amount of space, resists compaction, and constitutes increased
32 risk to site and worker safety.
- 33 f. Proper management of construction and demolition waste created by
34 deconstruction of buildings:
- 35 1) help the state and [city] [county] achieve solid waste reduction,
 - 36 2) conserve facility resources,
 - 37 3) extend the useful life of the facility,
 - 38 4) improve site and worker safety, and
 - 39 5) minimize tonnage fees payable to the State of Iowa, thus reducing
40 the costs of facility operational costs and moderating fees charged
41 for use of the facility.
- 42 g. Volume reduction at the source may in some respects add modestly to the
43 cost of deconstruction of a building and in other respects may make
44 possible some cost recovery and cost reduction; notwithstanding these
45 considerations, it is necessary in order to protect the public health, safety
46 and welfare that this ordinance be adopted.

- 1 h. The [city] [county] will incur significant costs in the administration of this
- 2 ordinance, which costs must be recovered by a reasonable application and
- 3 processing fee.
- 4 i. It is appropriate to require owners or contractors engaged by owners for
- 5 the purpose of deconstructing a building to make a performance security
- 6 deposit with the [city] [county] reasonably calculated to offset the adverse
- 7 consequences for facility resources of the applicant's failure, in whole or
- 8 in part, to fulfill the applicant's waste management plan. In the event
- 9 applicant fulfills applicant's waste management plan in whole or in part,
- 10 all or an appropriate portion of the performance security deposit should be
- 11 rebated in recognition of all or part of the adverse consequences for
- 12 facility resources avoided by such fulfillment.
- 13 j. Construction and demolition waste remaining after satisfactory diversion
- 14 should be subject to reduced fees and charges at the facility.

15 Section 2. Definitions

- 16 a. "Applicant" means any person, firm, limited liability company,
- 17 association, partnership, political subdivision, government agency,
- 18 municipality, industry, public or private corporation, or any other entity
- 19 whatsoever who applies to the [city] [county] for a building permit.
- 20 b. "Building permit (or "construction permit) means a permit issued by the
- 21 [city] [county] in accordance with this ordinance or any other ordinance of
- 22 the [city] [county] upon payment of the required fee and deposit, for a
- 23 construction project.
- 24 c. "Construction and demolition waste" (hereinafter referred to as "C&DW")
- 25 means waste building materials including wood, metals and rubble which
- 26 result from construction, demolition, deconstruction or relocation of
- 27 structures. Such waste shall also include trees cleared from a project site.
- 28 Consistent with the legal duty of every waste generator under state and
- 29 federal law to identify, specially handle and dispose of hazardous and
- 30 special waste (including but not limited to asbestos and lead-based paint),
- 31 C&DW shall not contain hazardous and special waste (including but not
- 32 limited to asbestos and lead-based paint) in quantities or conditions subject
- 33 to special handling and safety regulations under state and federal laws. To
- 34 be deemed C&DW, material shall be certified as such by the applicant in
- 35 writing in the following form: "I hereby certify that the C&DW subject to
- 36 the permit applied for does not contain hazardous and special waste
- 37 (including but not limited to asbestos and lead-based paint) in quantities or
- 38 conditions subject to special handling and safety regulations under state
- 39 and federal laws." Certified C&DW remaining after satisfactory diversion
- 40 under the provisions of this ordinance shall be subject to such reduced fees
- 41 and charges at the facility, if any, as the facility may determine.
- 42 d. "C&DW management application and processing fee" (hereinafter
- 43 referred to as "C&DWMAP fee")¹ means the fee established from time to

¹ The C&DWMAP fee (and the performance security deposit hereinafter referred to) is authorized (for cities) by §384.84 as a "solid waste disposal" rate or charge, and must be established in a sufficient amount to help "...produce gross revenues at least sufficient to pay the expenses of operation and maintenance..." of the facility.

- 1 time by the [city] [county] in an amount reasonably calculated to recover
2 the costs of administration of this ordinance. The C&DWMAP fee
3 schedule established by the [city] [county] may reflect a sliding scale
4 based on the weight or volume of C&DW reflected in the applicant's
5 waste management plan.²
- 6 e. "Construction project" for purposes of this ordinance means new
7 construction consisting of one or more buildings for residential,
8 commercial or agricultural use comprising, individually or collectively, at
9 least 10,000 square feet³ of interior space.
- 10 f. "Contractor" means any person or entity holding, or required to hold, a
11 contractor's license of any type under the laws of the state, city or county,
12 or who performs (whether as contractor, subcontractor, owner-builder, or
13 otherwise) any deconstruction, construction, deconstruction, demolition,
14 remodeling, renovation, or landscaping service relating to buildings or
15 accessory structures.
- 16 g. "Performance security deposit" (hereinafter "PSD" means a sum of money
17 to be deposited with the [city] [county], by cash, certified check or money
18 order, in an amount established from time to time by the [city] [county]
19 reasonably calculated to offset the adverse consequences for facility
20 resources of the applicant's failure, in whole or in part, to fulfill the
21 applicant's waste management plan as defined below. The PSD fee
22 schedule(s) established by the [city] [county] may reflect a sliding scale
23 based on the weigh or volume of C&DW reflected in the applicant's waste
24 management plan. PSD schedules for covered projects and noncovered
25 projects need not be the same. The PSD shall be in addition to the
26 C&DWMAP fee any other fees associated with deconstruction of a
27 building, and shall be paid by the applicant prior to commencement of any
28 construction. Upon the effective date of this ordinance, the PSD shall be
29 \$10.00⁴ per 1000 square feet of interior space of all buildings combined.
- 30 h. "Waste management plan" (hereinafter "WMP") means a completed
31 WMP form, approved by the [city] [county] for the purpose of compliance
32 with this ordinance, submitted by the applicant.

Like all such fees and charges, after adoption it must be "...published in the same manner as an ordinance." The C&DWMAP fee (and the performance security deposit hereinafter referred to) is authorized (for counties) by §331.465(1)(a). *See also* §331,461(2)(b). If the city or county adopting this ordinance is not the operator of the facility, but participates only as a member of the 28E entity that operates the facility, provision should be made to properly allocate C&DWMAP fee proceeds between the city or county collecting the fee and the facility depending upon the respective administrative burdens of each in the administration of the ordinance. As will all such fees and charges, the C&DWMAP fee and PSD should be based on reasonable cost accounting, and periodically adjusted to account for inflation or other factors.

² A sliding scale is appropriate for the reason that more administrative supervision is involved for large projects than for small projects.

³ This figure must be established based on local considerations, particularly the public or private resources available in the community for recycling.

⁴ See footnote 1.

1 i. “WMP compliance official” means the designated [facility] [city] [county]
2 staff person(s) authorized and responsible for implementing this
3 ordinance.⁵

4 Section 3. Application for permit, WMP, and payment of C&DWMAP fee

5 a. WMP forms: Applicants for a new construction permit involving any
6 construction project subject to this ordinance shall complete and submit a
7 waste management plan (“WMP”), on a WMP form approved by the [city]
8 [county] for this purpose as part of the application packet for the
9 construction permit. The completed WMP shall indicate all of the
10 following:

- 11 1) the estimated volume or weight of project C&DW, by materials
12 type, to be generated;
- 13 2) the maximum volume or weight of such materials that can feasibly
14 be diverted via salvage or recycling;
- 15 3) the vendor or facility that the applicant proposes to use to collect or
16 receive that material; and
- 17 4) the estimated volume or weight of C&DW that will be landfilled.
- 18 5) a site plan showing the intended flow of salvageable and
19 recyclable material from each portion of the development to
20 salvage, recycling or trash enclosure(s),
- 21 6) identification of the location of receptacle(s), frequency of
22 collection, and who is responsible for collecting and transporting
23 salvageable or recyclable materials,
- 24 7) a list of specific materials to be targeted for salvage or recycling,
- 25 8) a construction plan specifying any salvaged or recycled material to
26 be used in the construction of the proposed development (e.g.
27 recycled brick, tile, or insulation made from recycled plastics),
- 28 9) the contractor’s estimation of the cost of undertaking the measures
29 described in the WMP and the revenue, if any, that can be derived
30 from the disposition of salvaged or recycled materials, and
- 31 10) the contractor’s certification that the volume of the C&DW
32 diverted from disposal at the facility as a consequence of the
33 measures described in the WMP constitute at least fifty percent
34 (50%)⁶ of the volume and dollar value of the C&DW that would
35 have been subject to disposal at the facility if the measures
36 described in the WMP had not been undertaken.

37 b. A WMP shall be reviewed and approved or denied by the WMP
38 compliance official based upon whether the WMP is reasonable and
39 appropriate in light of the market conditions and recycling opportunities
40 existing in the community at the time the WMP is filed. The WMP

⁵ The identity of the designated WMP compliance official will vary from jurisdiction to jurisdiction depending on individual circumstances. The position could be filled by the director or an employee of the facility, the building official of a city or county, or some other officer of a city or county. In any event, the activities of the WMP compliance official must be coordinated with the activities of the city or county office that issues construction, building or demolition permits.

⁶ See footnote 1.

1 compliance officer's decision may be appealed under the provisions of
2 Section 6 of this ordinance.

- 3 c. Calculating volume and weight of C&DW: In estimating the volume or
4 weight of materials identified in the WMP, the applicant shall use the
5 standardized Conversion Rates approved by and on file with the facility
6 for this purpose.⁷
- 7 d. The C&DWMAP fee payable with the application shall be in addition to
8 any other fees associated with new construction, and shall be paid prior to
9 commencement of any activity associated with new construction.

10 Section 4. Compliance With WMP

- 11 a. Compliance documentation: Within 30 days after the completion of
12 construction, the applicant shall submit to the WMP compliance official
13 documentation that it has met the diversion requirement for the project.
14 The diversion requirement shall be that the applicant has diverted at least
15 fifty (50) percent of the total C&DW generated by the project via salvage
16 or recycling, unless the applicant has been granted an unfeasibility
17 exemption pursuant to Section 5 of this ordinance, in which case the
18 diversion requirement shall be the maximum feasible diversion rate
19 established by the WMP compliance official for the project. This
20 documentation shall include all of the following:
 - 21 1) Receipts from the vendor or facility which collected or received
22 each material showing the actual weight or volume of that
23 material;
 - 24 2) A copy of the previously approved WMP for the project adding the
25 actual volume or weight of each material diverted and landfilled;
 - 26 3) Any additional information the applicant believes is relevant to
27 determining its efforts to comply in good faith with this ordinance.
- 28 b. Weighing of wastes: applicants shall make reasonable efforts to ensure
29 that all C&DW diverted or landfilled are measured and recorded using the
30 most accurate method of measurement available. To the extent practical,
31 all C&DW shall be weighed by measurement on scales at applicant's cost.
32 Such scales shall be in compliance with all regulatory requirements for
33 accuracy and maintenance. For C&DW not amenable to weighing due to
34 small size or other considerations, a volumetric measurement shall be
35 used. For conversion of volumetric measurements to weight, the applicant
36 shall use the standardized conversion rates approved by the [city] [county]
37 for this purpose.
- 38 c. Determination of compliance and release of PSD:⁸ The WMP compliance
39 official shall review the compliance documentation submitted and
40 determine whether the applicant has complied with the diversion
41 requirement, as follows:

⁷ See footnote 4.

⁸ The administrative decisions of the WMP compliance official called for in this section should always be documented and consistent from case to case. The easiest way for an Applicant to challenge and appeal a decision by the WMP compliance official is to claim that the decision is inconsistent if not discriminatory. Good records of consistent application of the law are always the best defense.

- 1) Full compliance: If the WMP compliance official determines that the applicant has fully complied with the diversion requirement applicable to the project, the WMP compliance official shall cause the full PSD to be released to the applicant.
- 2) Good faith effort to comply: If the WMP compliance official determines that the diversion requirement has not been achieved, the WMP compliance official shall determine on a case-by-case basis whether the applicant has made a good faith effort to comply with this ordinance. In making this determination, the WMP compliance official shall consider the availability of markets for the C&DW landfilled, the size of the project, and the documented efforts of the applicant to divert C&DW. If the WMP compliance official determines that the applicant has made a good faith effort to comply with this ordinance, the WMP compliance official shall release the PSD, or a portion thereof, to the applicant. Any portion of the PSD not released to the applicant shall be forfeited to the facility to offset the adverse consequences for facility resources of the applicant's failure, in whole or in part, to fulfill the applicant's waste management plan.
- 3) Noncompliance: If the WMP compliance official determines that the applicant has not made a good faith effort to comply with this ordinance, or if the applicant fails to submit the required compliance documentation within the required time period, then the PSD shall be forfeited to the facility to offset the adverse consequences for facility resources of the applicant's failure, in whole or in part, to fulfill the applicant's waste management plan.

Section 5. Unfeasibility exemption

- a. Application: If an applicant for a covered project experiences unique circumstances that the applicant believes make it unfeasible to comply with the diversion requirement, the applicant may apply for an exemption at the time the applicant submits the WMP required under Section 3 of this ordinance. The applicant shall indicate on the WMP the maximum rate of diversion the applicant believes is feasible for each material and the specific circumstances that the applicant believes make it unfeasible to comply with the diversion requirement.
- b. Meeting with WMP compliance official: The WMP compliance official shall review the information supplied by the applicant and shall meet with the applicant to discuss possible ways of meeting the diversion requirement. Upon request of the [city] [county], the WMP compliance official may request that staff from the facility attend this meeting or may require the applicant to request a separate meeting with facility staff. Based on the information supplied by the applicant and, if applicable, the facility, the WMP compliance official shall determine whether it is possible for the applicant to meet the diversion requirement.
- c. Granting of exemption: If the WMP compliance official determines that it is unfeasible for the applicant to meet the diversion requirement due to

1 unique circumstances, the WMP compliance official shall determine the
2 maximum feasible diversion rate for each material and shall indicate this
3 rate on the WMP submitted by the applicant. The WMP compliance
4 official shall return a copy of the WMP to the applicant marked “approved
5 for unfeasibility exemption” and notify the [city] [county] official
6 responsible for issuing construction, building or demolition permits that
7 the WMP has been approved.

- 8 d. Denial of exemption: If the WMP compliance official determines that it is
9 possible for the applicant to meet the diversion requirement, the WMP
10 compliance official shall so inform the applicant in writing. The applicant
11 shall have 30 days to resubmit a WMP form in full compliance with
12 Section 4 of this ordinance. If the applicant fails to resubmit the WMP, or
13 if the resubmitted WMP does not comply with Section 3 of this ordinance,
14 the WMP compliance official shall deny the WMP in accordance with
15 Section 4 of this ordinance, and notify the [city] [county] official
16 responsible for issuing construction, building or demolition permits that
17 the WMP has not been approved.

18 Section 6. Appeal. An adverse decision by the WMP compliance official with respect to
19 disapproval of a WMP or rebate of a PSD may be appealed by the applicant to the
20 [city council] [county board of supervisors] pursuant to the following rules [if the
21 city or county already has rules applicable to the appeal of adverse decisions
22 made by city or county officials, the existing process may be incorporated by
23 reference]:

- 24 a. The appeal must be filed in writing with the [city clerk] [county auditor
25 serving as secretary for the county board of supervisors] within five (5)
26 business days of the delivery of the adverse decision by the WMP
27 compliance official to the applicant.
- 28 b. The written appeal shall specify in detail:
29 1) the decision appealed from,
30 2) the errors allegedly made by the WMP compliance official giving
31 rise to the appeal,
32 3) a written summary of all oral and written testimony the applicant
33 intends to introduce at the hearing, including the names and
34 addresses of all witnesses the applicant intends to call,
35 4) copies of all documents the applicant intends to introduce at the
36 hearing, and
37 5) the relief requested.
- 38 c. Within three (3) business days of the filing of the appeal, the WMP
39 compliance official shall specify in writing:
40 1) the reasons for making the decision appealed from,
41 2) a written summary of all oral and written testimony the WMP
42 compliance official intends to introduce at the hearing, including
43 the names and addresses of all witnesses the WMP compliance
44 official intends to call, and
45 3) copies of all documents the WMP compliance official intends to
46 introduce at the hearing.

1 d. Within five (5) business days of the filing of the appeal, the [city clerk]
2 [county auditor serving as secretary for the county board of supervisors]
3 shall notify the applicant and the WMP compliance official by ordinary
4 mail, and shall give public notice in accordance with Chapter 21, Iowa
5 Code, of the date, time and place for the regular or special meeting of the
6 [city council] [board of supervisors] at which the hearing on the appeal
7 shall occur. The hearing shall be scheduled for a date not later than twenty
8 (20) days after the filing of the appeal. The rules of evidence and
9 procedure, and the standard of proof to be applied, shall be the same as
10 provided by Chapter 17A, Code of Iowa. The applicant may be
11 represented by counsel. The WMP compliance official may be represented
12 by counsel for the facility or by the [city] [county] attorney, or by an
13 attorney designated by the [city] [county] at [city] [county] expense.

14 Section 7. Enforcement

- 15 a. Violation of any provision of this ordinance may be enforced by civil
16 action including an action for injunctive relief. In any civil enforcement
17 action, administrative or judicial, the [city] [county] shall be entitled to
18 recover its attorneys' fees and costs from a person who is determined by a
19 court of competent jurisdiction to have violated this ordinance.
- 20 b. Violation of any provision of this ordinance may also be enforced as a
21 municipal infraction within the meaning of §364.22, pursuant to the
22 [city's] [county's] municipal infraction ordinance
- 23 c. Enforcement pursuant to this section shall be undertaken by the [city]
24 [county] through the [city] [county] attorney.