MUSCATINE

Division of Public Works .
1000 South Houser St.
Muscatine, IA 52761

Recycling Center and Transfer Station

Phone (563) 263-9689
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Recycling Center
Transfer Station
Landfill Operations
Refuse Collection

MEMORANDUM

To: Mayor and City Council Members

Cc: Gregg Mandsager, City Administrator

From: Laura Liegois, Solid Waste Manager

Date: April 29, 2011

Re: Request Approval of 28E Agreement with the City of Fruitland for Refuse Collection Services

Introduction:
The City of Muscatine and City of Fruitland have been in a contract agreement for services provided by the City of Muscatine's Refuse Collection for refuse and recycling collection in Fruitland, Iowa since 2009. The City of Fruitland would like to enter into an agreement with the City of Muscatine for five years for refuse and recycling services beginning July 1, 2011.

Background:
The City of Fruitland requested proposals from several private haulers and the City of Muscatine in the spring of 2009 with Muscatine being awarded the contract to provide refuse and recycling services. This service contract has been in place since July 2009.

The new contract will be a five-year contract with potential to renew for two, one-year renewal periods. The language in the contract is updated to include curbside recycling collection services provided by Allied Waste.

Recommendation:
It is staff's recommendation that the City of Muscatine and City of Fruitland enter into a 28 E Agreement contract for services beginning on July 1, 2011 – June 30, 2016. Cost per household is $20.00 and billed to the City of Fruitland each month. There is no senior citizen discount for their residents. Each year the cost per household will change to reflect the charges of the City of Muscatine's regular residential refuse collection fees per household.

Revenue from the City of Fruitland is approximately $78,000.00 per year and is budgeted in the Refuse Collection budget.

The City of Fruitland will be approving this contract at their May 10, 2011 council meeting.

REFUSE COLLECTION SERVICES CONTRACT

COME NOW the following parties, the City of Muscatine, Iowa, (hereinafter "Muscatine") and the City of Fruitland, Iowa, (hereinafter "Fruitland") and pursuant to and in compliance with Chapter 28E of the Code of Iowa hereby agree and contract with each other as follows:

WHEREAS Muscatine has the necessary equipment and personnel to accomplish residential refuse collection and contract with Allied Waste to accomplish curbside recycling; and,

WHEREAS Fruitland desires to provide residential refuse collection and recycling for its citizens; and,

WHEREAS both parties wish to maximize the efficiency and economies of their resources;

IT IS THEREFORE AGREED that the parties shall enter into a contract in which Muscatine provides residential refuse collection to Fruitland with reimbursement for said services by Fruitland as follows:

A. Term: This contract shall be for a period of five (5) years beginning July 1, 2011 and ending on June 30, 2016.

B. Renewal: This agreement may be extended by up to two additional one-year extensions upon written agreement of the parties.

C. Obligations:

1. Scope of Services: The collection services shall be conducted in a manner, which results in maintaining a sanitary, efficient, and customer-friendly environment for the residents of the City of Fruitland. Muscatine shall furnish all labor, equipment, materials, supplies, tools, supervision, and all other items incidental thereto, and perform all services necessary and specified in the prescribed manner and time to provide collection services in accordance with the terms of this Agreement.

2. Muscatine's Obligations: In return for payment of fees, Muscatine shall provide the following services to Fruitland:

a) Residential refuse pick up once a week on Mondays, between 5:00 am and 5:00 pm.

b) All waste will be brought to the Muscatine Recycling Center and Transfer Station in Muscatine, Iowa for disposal at the Muscatine County Landfill.

c) Residential pick up shall be from the curbside of the street or alley.

d) Residential garbage shall be bagged in closed plastic garbage bags approved by Muscatine or in covered garbage containers (No larger than 40-gallon can and a 50 lb limit).

e) Muscatine will contract with Allied Waste to provide curbside recycling containers and services on a bi-weekly basis on Mondays.

f) Yard waste in Muscatine yard waste bags (purchased for $1.00 each) picked up on designated collection days. Yard waste includes: organic debris such as grass clippings, leaves, garden wastes, prunings, weeds, and brush and tree branches produced as part of yard and garden maintenance. Yard waste includes tree debris that is securely tied together in bundles not longer than 48 inches or wider than 18 inches in diameter. Individual pieces of yard waste cannot exceed 10 inches in diameter.

g) Residents will be allowed three (3) large bulky waste pickups per year. Items include such as furniture, doors, etc. No large amounts of items for pick up. Electronic waste, appliances, and tires must be prepaid before pick up. Residents must arrange at the Muscatine Recycling Center and Transfer Station.

h) Spring Clean Up will coincide with the Muscatine's Spring Clean Up week. (Usually held the last full week of April.) Items for pick up will include large bulky items, small amounts of building materials, electronic waste, appliances, and tires.

i) Residents of Fruitland can utilize the Muscatine Compost Site located at 1000 S. Houser St. in Muscatine, IA. Residents can bring yard waste items of grass clippings, leaves, brush, and trees for no charge. Residents can also have at no cost, wood mulch, compost, and firewood.

j) Public education on services provided will be the responsibility of Muscatine.

k) Muscatine will handle all refuse collection complaints from Fruitland through the Muscatine Recycling Center and Transfer Station.

3. Fruitland's Obligations: In return for refuse collection services, Fruitland shall pay Muscatine the following fees:

a) Monthly Rate: Each household that receives services from Muscatine will be charged the rate of $20.00 as of July 1, 2011. The fees subject during the five-year period will be the same fee structure as Muscatine's refuse collection fees, based upon the need to adjust for services provided. Muscatine will provide the rate adjustment information to Fruitland by January 15th for the next fiscal year.

b) Billing: Fruitland will be responsible for billing Fruitland customers for services. Muscatine will send an invoice to Fruitland by the 10th of each month. Fruitland in return will send payment to Muscatine within 30 days.

c) Fee Adjustments: The parties agree that monthly rates shall be subject to automatic adjustments to reflect any increase in the Muscatine Transfer Station tipping fees. Said rate adjustments shall be made within 30 days of the Muscatine Transfer Station rate increase. In addition, if necessary, Muscatine will submit adjustments in the rates to fully cover increases in costs resulting from changes in any laws, (tax, fees, surcharge, or other imposition upon the business or activity), ordinances, regulatory requirements, or guidelines (including changes in construction or interpretation thereof or change in the manner or method of enforcement thereof). The City Council of Fruitland agrees to not unreasonably refuse to approve said changes.

D. Change of Service: In the event that either party desires to make a substantial change in the method of service or scheduling prior to the end of this contract, said contract and rates shall be renegotiated at that time.

E. *Per Capita* Fees: Each city shall remain individually responsible for its own *per capita* fee billed by and payable directly to the City of Muscatine for the Muscatine County Solid Waste Management Agency for landfill expansion projects.

F. Scheduled Routes: Muscatine agrees to maintain regular pick up routes with the exception of holidays and inclement weather. Should a regular pick up fall on a holiday, the pickup shall be the next regular pick-up day. The following shall be considered holidays for purposes of this Agreement: New Year's Day, President's Day, Memorial Day, Fourth of July, Labor Day, Veteran's Day, Thanksgiving Day, Day after Thanksgiving, Christmas Eve and Christmas Day. Muscatine may decide to suspend collection service on any or all of the above holidays. On the week of the observed holiday, scheduled collection day service shall be adjusted for the day(s) of the week preceding or following the holiday. Should inclement weather prevent Muscatine from accomplishing the scheduled route pickups, they shall be done the next regular pick up day. Allied Waste for recycling services may have a different collection for recycling services for holidays such as President's Day and Veteran's Day.

G. Indemnification: The City of Fruitland agrees to indemnify and hold harmless Muscatine, its officers, agents, and employees from any and all claims, settlements, and judgments to include all reasonable investigative fees, attorney's fees, and court costs for any damage or loss which is due to or arises in whole or in part from the services performed under this agreement, a breach of this agreement, or any omission or negligence arising out of performance or nonperformance of this Agreement, and those of its subcontractors or anyone for whom Muscatine is legally liable.

H. Default by Muscatine: Except when caused by Force Majeure or due to fault of Fruitland, it shall be an Event of Default if Muscatine fails to collect all solid waste and bulky waste placed out for collection as required by this agreement.

I. Fruitland's Remedies on Default:

1. Upon the occurrence of an event of default, Fruitland shall not exercise any of the remedies described below unless the event of default is listed above, and Fruitland has given Muscatine written notice describing in reasonable detail the nature of the event of default, and Muscatine has failed to cure the event of default. Muscatine shall have ten (10) days from receipt of notice of default to cure the event of default.

2. Subject to the foregoing required notice and cure period, Fruitland may take any or all of the following actions:

   a) Terminate this agreement immediately without any obligation or liability to Muscatine, unless such event of default is cured within the cure period;

   b) Take such action and exercise such rights as Fruitland may have at law or in equity, including, without limitation, the right to seek injunctive relief and specific performance on Muscatine's obligations hereunder. All rights and remedies of Fruitland shall be cumulative and the exercise of any right or remedy shall not be deemed a waiver, relinquishment, or abandonment of any other right or remedy.

J. Default by Fruitland: Except when caused by Force Majeure or due to fault of Muscatine, it shall be an event of default if Fruitland:

1. Fails to make payments due to Muscatine under this Agreement; or

2. Fails to perform any other material obligation or comply with any material term of this agreement.

K. Muscatine's Remedies on Default.

1. Upon the occurrence of an event of default, Muscatine shall not exercise any of the remedies described below unless the event of default is listed above, and Muscatine has given Fruitland written notice describing in reasonable detail the nature of the event of default, and Fruitland has failed to cure the event of default. Fruitland shall have ten (10) days from receipt of notice of default to cure the event of default.

2. Subject to the foregoing required notice and cure period, Muscatine may:

   a) Terminate this agreement immediately without any obligation or liability to Muscatine, unless such event of default is cured within the cure period;

   b) Take such action and exercise such rights as Muscatine may have at law or in equity including, without limitation, the right to seek injunctive relief and specific performance on Fruitland's obligations hereunder. All rights and

remedies of Muscatine shall be cumulative and the exercise of any right or remedy shall not be deemed a waiver, relinquishment, or abandonment of any other right or remedy.

3. Upon termination of this agreement, all sums due and payable to Muscatine shall become immediately due and payable without further action.

L. Termination on Default: The proper exercise of the right of termination is in addition to, and not in substitution for, such other remedies whether damages or otherwise of the party exercising the right of termination. When one party terminates its obligations to the other party in accordance with this agreement, all of its rights, remedies, powers, and privileges are terminated, or as may otherwise be specifically provided in this agreement.

M. Damages and Enforcement: Upon the occurrence of an event of default, the party in default hereunder shall be liable to the non-defaulting party for all loss, costs, and expenses incurred as a result of the event of default. The party who is unsuccessful shall bear the costs of the party who is successful in any legal proceeding enforcing any provision of this agreement of in defending such action, including reasonable attorney's fees.

N. Survival of Certain Rights and Obligations: No termination of this agreement limits or otherwise affects the rights and obligations of any party that have accrued before the date of such termination.

O. Mitigation of Damages. The Parties recognize that their legal obligation to mitigate damages to the other party in the event of default shall apply.

P. Force Majure:

1. Force Majeure means any of the following acts or events, and not others, which materially adversely affect the performance of the obligations of Fruitland or Muscatine that is such an act or event that is beyond the reasonable control, and not the result of willful or negligent action or a lack of due diligence of the party relying upon:

   a) An act of God, fire, flood, or other casualty;

   b) A valid and enforceable order, judgment, or law of any federal, state, or local court, administrative agency, or governmental body, specifically excluding OSHA, ANSI, IDOT or other health or safety-related enforcement actions; provided that the contesting in good faith or the failure in good faith to contest any such order, judgment, or law shall not constitute or be construed as such a wrongful or negligent act or omission or lack of reasonable diligence, and

2. As soon as a party becomes aware of a possible Force Majeure, such party shall notify the other party. In the event either party by reason of a Force Majeure is rendered unable to perform its obligations, then upon said party giving prompt

telephonic notice followed by written notice to the other party after knowledge of the occurrence of said Force Majeure, said party shall be excused from performing such obligations and have its time of performance delayed; provided, however, that, in no event, will a Force Majeure event affecting a party excuse it from any obligation to make any payment for services performed in accordance with this agreement. Notwithstanding anything in this section, should such delay exceed thirty (30) days, the party not claiming the Force Majeure may, at its sole election, terminate this agreement. A Force Majeure for which said notice has not been given shall be an unexcused delay. The effects of said Force Majeure shall be remedied with all reasonable dispatch, and said party giving notice shall use best efforts to eliminate and mitigate the consequences thereof.

Q. Action Taken During Force Majeure:

1. If a Force Majeure event occurs which prevents or interferes with the provision of services, Fruitland shall be obligated for payments to Muscatine only to the extent of services performed.

2. Muscatine shall not be paid for services not performed as a result of a Force Majeure. In the event that Muscatine is unable to perform the Services as a result of a Force Majeure, Fruitland may enter into service agreements with others or take whatever action Fruitland deems appropriate to cause the provision of services during the period of the Force Majeure.

R. Contract Interpretation: No amendment or modification of this agreement shall be valid unless expressed in writing and executed by the Parties hereto in the same manner as the execution of the contract. The laws of the State of Iowa shall govern this agreement. This is a completely integrated agreement and contains the entire agreement of the parties, and any prior written or oral agreements, which are different from the norms, conditions, and provisions of the agreement, shall be of no effect and shall not be binding upon either party. Any judicial action under the terms of this agreement shall be exclusively in the District Court for Muscatine County, Iowa.

S. Transferability of Contract: Other than by operation of law, no assignment of this agreement or any right accruing under this agreement shall be made in whole or in part by either party without the express written consent of the other party.

T. Severability: If a court of competent jurisdiction holds any portion of this agreement invalid or unenforceable, the remaining portions of this agreement shall continue in full force and effect.

U. Miscellaneous Headings: Title to articles, paragraphs, and subparagraphs are for information purposes only and shall not be considered a substantive part of this agreement.

V. 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.

W. Counterparts: This agreement may be executed in any number of counterparts, each of which shall constitute an original, no other counterpart needing to be produced, and all of which when taken together shall constitute the same instrument.

X. Definitions:

1. GARBAGE shall include all ordinary household wastes including perishable foodstuffs and paper. Garbage shall NOT include brush, tree branches or yard waste, paints, varnishes, or hazardous material, or furniture, appliances, or electronic waste.

2. RECYCLING shall include items of plastic food containers #1-7, tin and aluminum cans, office paper, newspaper, cardboard, paperboard, and glass food containers. All recyclable materials must be clean and fee of food particles.

3. APPLIANCES shall include any apparatus containing refrigerant gases, PCB's, mercury or other regulated substances, which require specialized collection and disposal in accordance with applicable laws and regulations.

4. CHRISTMAS TREE COLLECTION shall include the collection of Christmas Trees as negotiated between Fruitland and Muscatine.

5. CURBSIDE includes the area bounded by the outer edge of the paved road or graveled road surface and the limit of Fruitland right-of-way at the front property line. In non-curbed areas, a road shoulder, ditch, or grass section is normally present in lieu of the above. In appropriate areas, a driveway may be utilized in lieu of curb-area collection.

6. MISSED COLLECTIONS do NOT include late setouts. A missed collection is one in which the resident has placed solid waste curbside on or before 5:00 AM and which Muscatine fails to pick up.

7. RESIDENTIAL PREMISES include single-family and two-family dwellings. A residential premise may include a townhome complex where the individual units are served and billed separately for water and/or wastewater services.

8. SOLID WASTE is the waste generated by normal residential activity, excluding yard waste and bulky waste. Solid waste does not include dirt, sod, stone, brick, railroad ties, construction materials, or hazardous waste as defined in Section 455B.411 of the Code of Iowa, or source, special nuclear, or by-product material as defined in the Atomic Energy Act of 1954, as amended.

This contract shall be a complete recitation of the agreement of the parties and shall contain all obligations and responsibilities of the parties.

Dated this 5th. day of May , 2011.

Richard W. O'Brien, Mayor
City of Muscatine, Iowa

Dewayne Walter, Mayor
City of Fruitland, Iowa

Attest:

Gregg Mandsager, City Clerk
City of Muscatine, Iowa

Attest:

Kim Thompson, City Clerk
City of Fruitland, Iowa

STATE OF IOWA,

SS:

MUSCATINE COUNTY

On this 5th day of May, 2011, before the undersigned Notary Public personally appeared Richard W. O'Brien and Gregg Mandsager, to me personally known, and who being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Muscatine, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in the Resolution No. 91651-0511 adopted by the City Council, under Roll Call No. 21594 of the City Council on the day 5th day of May, 2011, and that Richard W. O'Brien and Gregg Mandsager acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.

NOTARIAL SEAL IOWA
Fran Donelson
Iowa Notarial Seal
Commission Number 752902
My Commission Expires 5-22-2014

Fran Donelson
Notary Public in and for the State of Iowa

STATE OF IOWA

SS:

MUSCATINE COUNTY

On this 10 day of May, 2011, before the undersigned Notary Public personally appeared Dewayne Walter and Kim Thompson, to me personally known, and who being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Fruitland, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in the Resolution No. 20110511 adopted by the City Council, under Roll Call No. 3 of the City Council on the 10 day of May, 2011, and that Dewayne Walter and Kim Thompson acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.

NOTARIAL SEAL IOWA
Fran Donelson
Iowa Notarial Seal
Commission Number 752902
My Commission Expires 5-22-2014

Fran Donelson
Notary Public in and for the State of Iowa

Ann Donelson
Iowa Notarial Seal
Commission Number 132602
My Commission Expires

Ann Donelson
Iowa Notarial Seal
Commission Number 132602
My Commission Expires