

City Council Agenda Items
and
Contracts, Leases or Agreements

21-Aug-12

City Council Meeting Date
Agenda Items Only

David Jurgens
Submitted By

Utilities
Division

Utilities
Department

Action Required:

Approval a one year extension agreements with Deffenbaugh Industries, Hog Box, and Waste Management of Northwest Arkansas to haul and dispose of solid waste and recycling within the City of Fayetteville.

Cost of this request	\$ -	Category / Project Budget	Program Category / Project Name
Account Number	\$ -	Funds Used to Date	Program / Project Category Name
Project Number	\$ -	Remaining Balance	Solid Waste Fund Name

Budgeted Item Budget Adjustment Attached

Department Director: [Signature] Date: 3 Aug 12 Previous Ordinance or Resolution # 245-08, 12/16/08
55-07, 4/3/07
157-07, 9/4/07
 City Attorney: [Signature] Date: 8-6-12 Original Contract Date: _____
 Original Contract Number: _____
 Finance and Internal Services Director: Paul a. Behn Date: 8-6-2012
 Chief of Staff: [Signature] Date: 8-8-12
 Mayor: [Signature] Date: 8/8/12

08-03-12 P04:20 RCVD

Received in City Clerk's Office [Signature]

Received in Mayor's Office [Signature]

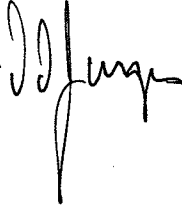
ENTERED 8/6/12

Comments:

To: Fayetteville City Council

Thru: Mayor Lioneld Jordan
Don Marr, Chief of Staff

From: David Jurgens, Utilities Director



Date: August 3, 2012

Subject: Approval of one year extension agreements with Deffenbaugh Industries, Hog Box, and Waste Management of Northwest Arkansas to haul and dispose of solid waste and recycling

RECOMMENDATION

Staff recommends approval a one year extension agreements with Deffenbaugh Industries, Hog Box, and Waste Management of Northwest Arkansas to haul and dispose of solid waste and recycling within the City of Fayetteville.

BACKGROUND

The City allows private haulers to collect solid waste when there is an approved franchise agreement in place. The agreement allows the hauler to collect and haul solid waste in roll off style open top or roll off style compactor containers of at least 20 cubic yards or greater within the City of Fayetteville for a monthly fee of 10% of the gross revenue of services. The first agreement to haul and dispose of solid waste in the City of Fayetteville was executed with an outside vendor in 2004 for a term of 3 years. As of December 31, 2011, all franchise agreements have expired, but have been operating under informal letter extensions while the City evaluates the franchise hauling program.

DISCUSSION

A one year extension was requested by haulers while the City evaluates the franchise hauling program. Both City staff and haulers have had the opportunity to review and provide comments. Primary changes include:

- To cover a one year term
- Added recycling requirements and fee
- Eliminated restriction on recyclable containers
- Increased accountability on monthly/annual reporting
- Paragraph 9 (FOIA and other legal liability issues)

City staff also recommends that the "Recycling Fee" of 5% of gross revenue received for providing the hauling of recyclables shall not go into effect until the Solid Waste Ordinances are updated to add recycling under the franchise hauling program. This is expected to occur later this year.

BUDGET IMPACT

None.

RESOLUTION NO. _____

A RESOLUTION APPROVING ONE (1) YEAR EXTENSION AGREEMENTS WITH DEFFENBAUGH INDUSTRIES, HOG BOX AND WASTE MANAGEMENT OF NORTHWEST ARKANSAS TO HAUL AND DISPOSE OF SOLID WASTE AND RECYCLING IN THE CITY

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby approves one (1) year extension agreements with Deffenbaugh Industries, Hog Box and Waste Management of Northwest Arkansas to haul and dispose of solid waste and recycling in the City. Copies of each of the agreements are attached to this Resolution and incorporated herein.

PASSED and APPROVED this 21st day of August, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

AGREEMENT TO HAUL AND DISPOSE OF SOLID WASTE & RECYCLING IN THE CITY OF FAYETTEVILLE

This Agreement (the "Agreement"), is entered into on this ____ day of _____ 2012, between the **City of Fayetteville, Arkansas**, a municipal corporation (the "City"), and _____ (the "Hauler"), and shall be in full force and effect on the date first written above, City and Hauler agree as follows:

1. The term of this Agreement shall be for one (1) year, with the option to renew for one (1) additional year, unless otherwise terminated pursuant to the terms hereof.
2. Hauler agrees that from and after the original date of this Agreement, all customer service Agreements for facilities within the corporate limits of the City, excluding residential areas, entered into before or after the effective date of this Agreement, or renewed shall have terms of no more than one (1) year and any subsequent extensions shall be for terms of no more than one (1) year. No customer service Agreement shall extend the terms of this Agreement.
3. Hauler agrees and understands that it may only collect and haul solid waste using the type equipment commonly referred to as open-top roll-off style containers with capacities of twenty (20) cubic yards or greater, or roll-off style compactor containers with capacities of twenty (20) cubic yards or greater, containing waste generated from industrial, large commercial or construction/demolition activities, or which is classified as Special Waste, Hazardous Waste, grease or any other type Solid Waste which requires special handling or disposal as set forth in ADEQ Reg. No. 22. Hauler shall not collect any Class 1 or Class 4 material in other containers.

Hauler agrees and understands that it may only collect and haul recyclables outside the residential recycling program. Unseparated recyclables shall not be allowed unless Hauler has been given authority by the City to do so on a program specific basis, approval to be determined by the appropriate department director. As of the signing of this agreement, there are two unseparated recycling programs that are approved:

- a) construction and demolition waste; and
- b) University of Arkansas event comingled containers.

4. In consideration of the right to provide the hauling of solid waste and/or recyclables described in Item #3 above, Hauler agrees and understands that it shall be required to pay a monthly fee of:
 - a) ten (10%) percent (the "Solid Waste Fee") of the gross revenue received for providing solid waste hauling services
 - b) five (5%) percent (the "Recycling Fee") of the gross revenue received for providing the hauling of the recyclables.
5. Hauler agrees and understands that it may utilize the City's transfer station for all Class 1 waste collected pursuant to this Agreement and shall deliver all Class 4 waste to a properly licensed landfill facility. Hauler shall pay all transfer station fees to the transfer station operator and all landfill fees to the landfill operator, as they may be established and amended, from time to time.
6. Hauler shall pay all fees due hereunder, along with submitting "Attachment A: Solid Waste Documentation", or page 1 of Attachment A in conjunction with an agreed upon vendor

generated report, on or before the 15th of each calendar month for the immediately preceding calendar month. Payments of fees received after the due date shall be assessed a 10% penalty per month. If Hauler fails to pay the fees within forty-five (45) days of the due date, the City may terminate this Agreement upon delivery of one (1) written notice to the Hauler. The supporting information shall be sufficient to demonstrate the accuracy of the fee calculation, and shall include the following information: (i) Hauler's worksheet calculating the fees remitted; (ii) a list of payments received from customers within the City; (iii) such list shall clearly indicate whether each payment was from a permanent or temporary customer, and (iv) the fee shall be based upon all activity from each customer account within the City, and shall include the normal billing charges for all free or discounted services (including those for non-profit organizations) including but not limited to delivery, pull charges, disposal charges, transportation charges, final pull charges, and return charges. With payment remittance, the City will review and obtain certain trade secret information, including rates, frequency of service, customer lists, and other customer information ("Confidential Information"). The City asserts this information is exempt from disclosure under the Arkansas Freedom of Information Act as the information meets the exemption for records that "if disclosed would give advantage to competitors." This information will only be reviewed by City financial staff, and will not be made available to City solid waste staff.

7. Hauler shall pay all fees due hereunder, along with submitting "Attachment B: Recycling Documentation", on or before the 15th of each calendar month for the immediately preceding calendar month. Payments of fees received after the due date shall be assessed a 10% penalty per month. If Hauler fails to pay the fees within forty-five (45) days of the due date, the City may terminate this Agreement upon delivery of one (1) written notice to the Hauler. The supporting information shall be sufficient to demonstrate the accuracy of the fee calculation, and shall include the following information: (i) volumes of recycling collected, in tons, by commodity, with disposition by destination market, for all source separated recycling; (ii) for any approved non-source separated program, the Hauler shall submit to the City by June 30th on annual basis, copies of contracts with processing mills; (iii) for any approved non-source separated program, the amounts, in tons, of recycling collected within Fayetteville, with disposition by destination market. With payment remittance, the City will review and obtain certain trade secret information, including rates, frequency of service, customer lists, other customer information, and contracts with recyclers and processing mills ("Confidential Information"). The City asserts this information is exempt from disclosure under the Arkansas Freedom of Information Act as the information meets the exemption for records that "if disclosed would give advantage to competitors." This information will only be reviewed by City financial staff, and will not be made available to City solid waste staff. Any Hauler found providing services for non-source separated recyclables without prior approval by the City shall be subject to a fee of \$500.00.
8. The City shall have the right to conduct an audit of Hauler's customer files and records for all customers located within the City, provided that such audit privilege shall be limited to once per calendar quarter. If such audit reveals the Hauler should have paid at least 5% more than reported, the cost of the audit shall be paid by the Hauler to the City. During such audit, the City may review and obtain certain trade secret information, including rates, frequency of service, customer lists, and other customer information ("Confidential Information"). This information shall not be divulged to any third party by the City, its employees, officers, or elected officials without the express written consent of the Hauler, or as otherwise required by law. The City asserts this information is exempt from disclosure under the Arkansas Freedom of Information

Act as the information meets the exemption for records that "if disclosed would give advantage to competitors." This information will only be reviewed by City financial staff, and will not be made available to City solid waste staff.

9. The City will advise Hauler of any request for information which the City, at the City's sole discretion, determines to be non-disclosable or otherwise subject to an exemption from disclosure under the Arkansas Freedom of Information Act. If a court of competent jurisdiction determines that said requested information is disclosable or otherwise is not exempt from disclosure under the Arkansas Freedom of Information Act, the City will comply with said finding and notify Hauler. Discovery requests made to the City during the course of any litigation, or any other subpoena or court order issued to the City for information or records related to Hauler and this Agreement, shall be promptly made known to Hauler.
10. Hauler agrees and understands that it shall submit to the City by June 30th on an annual basis: (i) a list of all commercial vehicles used to provide services in the City; (ii) proof of appropriate vehicle registration; (iii) and proof of the insurance required under Section 16.
11. Hauler agrees and understands that it shall provide by June 30th on an annual basis: (i) a list of vehicle operators collecting and hauling waste in the City of Fayetteville; (ii) proof of their valid and appropriate commercial drivers' licenses; (iii) and the provision, maintenance, and implementation of a plan to ensure that the vehicle operators maintain their commercial driver's licenses in accordance with applicable federal and state laws.
12. Hauler agrees that it shall comply with all federal, state and local laws applicable to the safety, environmental and transportation matters related to providing solid waste collection services under this Agreement. Hauler agrees that all open-top roll-off style containers will be properly covered during transit on streets and highways within Fayetteville.
13. The City reserves the right to inspect all vehicles and containers to ensure that the vehicles are safe and well-maintained and that all containers are well-maintained and water tight, if necessary.
14. If Hauler utilizes the City's transfer station, Hauler agrees and understands that it shall be required to establish an individual credit or service relationship with the City of Fayetteville transfer station operator. Hauler agrees that it shall comply with all practices, policies and procedures as established by the transfer station operator from time to time. Any tipping fee deposits required by the transfer station or landfill operators shall be refunded, less any unpaid tipping fees, when the Hauler ceases hauling activities governed by this Agreement.
15. This Agreement has been entered into freely and voluntarily by Hauler which agrees to abide by all of the terms and conditions as a matter of contractual obligation pursuant to applicable City ordinances. This is a contractual Agreement and is not intended to be part of or relate in any way to any license or ordinance created pursuant to A.C.A. §26-77-102.
16. Neither this Agreement, nor any rights or obligations hereunder may be assigned or transferred to any third part or affiliate.
17. For the purpose of this contract, the Point of Contact for the City of Fayetteville shall be the City's Utilities Director. The Point of Contact for the Hauler shall be

_____. Communications pertaining to day-to-day aspects of this contract shall be through these individuals. Either party may change its designated Point of Contact upon ten (10) days prior written notice to the other party.

18. Hauler agrees to protect, indemnify, defend and save harmless the City, its officials, officers, employees, agents, subcontractors, representatives and assigns from any loss, claim, liability, penalty, fine, forfeiture, demand cause of action, suit and costs and expenses incidental thereto (including costs of defense, settlement and reasonable attorneys' fees), to the extent caused by (i) Hauler's breach of any term, condition, covenant or warranty contained in this Agreement, or (ii) Hauler's negligent act or omission or willful misconduct related to the delivery of waste to the City transfer station or a properly licensed landfill facility.

19. Insurance: Hauler shall maintain the following insurance coverage during the term of this Agreement:

- a) Hauler shall provide and maintain, during the term of this Agreement, comprehensive general liability insurance, to protect against all claims arising out of the performance of its services hereunder that result in bodily injury, death or property damage. The policy or policies shall contain a clause that the insurer will not cancel or decrease the insurance coverage without first giving the City sixty (60) days notice in writing.
- b) Upon written request, Hauler shall furnish the City with evidence that the insurance required of it is in force.
- c) City will be added as an additional insured on General Liability and Auto Liability policies.
- d) The types of coverage and limits of liability of all insurance required herein shall be as follows:

COVERAGE	LIMITS OF LIABILITY
Workmen's Compensation	Statutory
Employer's Liability	\$500,000
Bodily Injury Liability except Automobile	\$1,000,000 each occurrence
Property Damage Liability Except Automobile	\$1,000,000 each aggregate
Automobile Bodily Injury	\$1,000,000 each person
Comprehensive General Liability	\$1,000,000 each occurrence
Automobile Property Damage Liability	\$1,000,000 each occurrence
Excess Umbrella Liability	\$1,000,000 each occurrence

20. Termination:

- a) Except as otherwise provided herein, if Hauler breaches this Agreement or defaults in the performance of any of the requirement or conditions contained herein, and such breach continues for fifteen (15) days after the City has given the Hauler written notice of such breach or default, the City may: (i) terminate this

- a) Except as otherwise provided herein, if Hauler breaches this Agreement or defaults in the performance of any of the requirement or conditions contained herein, and such breach continues for fifteen (15) days after the City has given the Hauler written notice of such breach or default, the City may: (i) terminate this Agreement no sooner than thirty (30) days after the date of written notice of such breach or default; (ii) cure the breach or default at the expense of the Hauler; and/or (iii) exercise any right or remedy to which it may be entitled by law.
 - b) The City may terminate this Agreement upon written notice to the Hauler if the Hauler makes an assignment for the benefit of creditors, or files a voluntary petition in bankruptcy, receivership or insolvency, or files an answer in any involuntary proceeding of that nature admitting the material allegations of the petition, or if a proceeding in bankruptcy, receivership or insolvency shall be instituted and such proceeding is not dismissed within sixty (60) days.
 - c) In the event that this Agreement is terminated for any reason, any amounts payable to the City by Hauler for services rendered for any reason whatsoever shall become immediately due and payable as of the date of such termination.
21. All notices required or permitted under this contract shall be submitted in writing to the other party of this contract, by U.S. Mail, which notice shall be effective three (3) days after deposit therein addressed to the following:
- | | |
|--|---|
| City of Fayetteville
Utilities Director
113 West Mountain Street
Fayetteville, AR 72701 | <u>DEFFENBAUGH INDUSTRIES</u>
Attn: <u>ANGELA BOWDWIN</u>
<u>PO Box 1700</u>
<u>LOWELL, AR 72745</u> |
|--|---|
22. Hauler agrees and understands that this Agreement and documents submitted to the City pursuant hereto are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville requesting such non-exempt documents, such non-exempt documents shall be provided in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (Ark. Code Ann. § 25-19-101 et seq.). Only legally authorized photocopying costs may be assessed for this compliance.
23. This Agreement shall be interpreted according to and enforced under the laws of the State of Arkansas. Capitalized terms herein shall have the same meaning as set forth in ADEQ Reg. No. 22.
24. A waiver by either party of any of the terms or conditions herein shall be limited to that particular instance, and shall not be construed as a general waiver of either party's right to seek appropriate remedies for any other breaches by either party.
25. Each paragraph of the Agreement is severable from all other paragraphs. In the event any court of competent jurisdiction determines that any paragraph or subparagraph is invalid or unenforceable for any reason, all remaining paragraphs and subparagraphs shall remain in full force and effect.
26. This contract constitutes the entire understanding of the parties and no Notification or variation of the terms of this contract shall be valid unless made in writing and signed by the duly authorized agents of the City of Fayetteville and the Hauler.

- 27. Each of the undersigned warrants that he or she has the full right, power, and authority to execute this contract on behalf of the party indicated for the purposes herein contained.
- 28. To the extent a definition or a specific term is not provided herein but is nonetheless required by the context, it is the intention of the parties to incorporate herein the definitions contained in applicable law and regulation in effect as the date hereof, except to the extent subsequent law or regulation shall expressly or implicitly mandate a revised definition.
- 29. The obligations of the parties to this Agreement, which by their nature would continue beyond the termination, cancellation or expiration of this Agreement, shall survive the termination (for any reason), cancellation or expiration of this Agreement.

IN WITNESS WHEREOF, we have hereunto set our hands on the date first written above.

CITY OF FAYETTEVILLE

DEFFENBAUGH INDUSTRIES

By: _____
LIONELD JORDAN, Mayor

By: Bob Mattis
BOB MATTIS
GENERAL MANAGER

ATTEST:

By: _____
SONDRA SMITH, City Clerk

By: _____

AGREEMENT TO HAUL AND DISPOSE OF SOLID WASTE & RECYCLING IN THE CITY OF FAYETTEVILLE

This Agreement (the "Agreement"), is entered into on this 6th day of August 2012 2012, between the **City of Fayetteville, Arkansas**, a municipal corporation (the "City"), and Hobey MFG Co. Inc. dba HOBBOX (the "Hauler"), and shall be in full force and effect on the date first written above, City and Hauler agree as follows:

1. The term of this Agreement shall be for one (1) year, with the option to renew for one (1) additional year, unless otherwise terminated pursuant to the terms hereof.
2. Hauler agrees that from and after the original date of this Agreement, all customer service Agreements for facilities within the corporate limits of the City, excluding residential areas, entered into before or after the effective date of this Agreement, or renewed shall have terms of no more than one (1) year and any subsequent extensions shall be for terms of no more than one (1) year. No customer service Agreement shall extend the terms of this Agreement.
3. Hauler agrees and understands that it may only collect and haul solid waste using the type equipment commonly referred to as open-top roll-off style containers with capacities of twenty (20) cubic yards or greater, or roll-off style compactor containers with capacities of twenty (20) cubic yards or greater, containing waste generated from industrial, large commercial or construction/demolition activities, or which is classified as Special Waste, Hazardous Waste, grease or any other type Solid Waste which requires special handling or disposal as set forth in ADEQ Reg. No. 22. Hauler shall not collect any Class 1 or Class 4 material in other containers.

Hauler agrees and understands that it may only collect and haul recyclables outside the residential recycling program. Unseparated recyclables shall not be allowed unless Hauler has been given authority by the City to do so on a program specific basis, approval to be determined by the appropriate department director. As of the signing of this agreement, there are two unseparated recycling programs that are approved:

- a) construction and demolition waste; and
 - b) University of Arkansas event comingled containers.
4. In consideration of the right to provide the hauling of solid waste and/or recyclables described in Item #3 above, Hauler agrees and understands that it shall be required to pay a monthly fee of:
 - a) ten (10%) percent (the "Solid Waste Fee") of the gross revenue received for providing solid waste hauling services
 - b) five (5%) percent (the "Recycling Fee") of the gross revenue received for providing the hauling of the recyclables.
 5. Hauler agrees and understands that it may utilize the City's transfer station for all Class 1 waste collected pursuant to this Agreement and shall deliver all Class 4 waste to a properly licensed landfill facility. Hauler shall pay all transfer station fees to the transfer station operator and all landfill fees to the landfill operator, as they may be established and amended, from time to time.
 6. Hauler shall pay all fees due hereunder, along with submitting "Attachment A: Solid Waste Documentation", or page 1 of Attachment A in conjunction with an agreed upon vendor

generated report, on or before the 15th of each calendar month for the immediately preceding calendar month. Payments of fees received after the due date shall be assessed a 10% penalty per month. If Hauler fails to pay the fees within forty-five (45) days of the due date, the City may terminate this Agreement upon delivery of one (1) written notice to the Hauler. The supporting information shall be sufficient to demonstrate the accuracy of the fee calculation, and shall include the following information: (i) Hauler's worksheet calculating the fees remitted; (ii) a list of payments received from customers within the City; (iii) such list shall clearly indicate whether each payment was from a permanent or temporary customer, and (iv) the fee shall be based upon all activity from each customer account within the City, and shall include the normal billing charges for all free or discounted services (including those for non-profit organizations) including but not limited to delivery, pull charges, disposal charges, transportation charges, final pull charges, and return charges. With payment remittance, the City will review and obtain certain trade secret information, including rates, frequency of service, customer lists, and other customer information ("Confidential Information"). The City asserts this information is exempt from disclosure under the Arkansas Freedom of Information Act as the information meets the exemption for records that "if disclosed would give advantage to competitors." This information will only be reviewed by City financial staff, and will not be made available to City solid waste staff.

7. Hauler shall pay all fees due hereunder, along with submitting "Attachment B: Recycling Documentation", on or before the 15th of each calendar month for the immediately preceding calendar month. Payments of fees received after the due date shall be assessed a 10% penalty per month. If Hauler fails to pay the fees within forty-five (45) days of the due date, the City may terminate this Agreement upon delivery of one (1) written notice to the Hauler. The supporting information shall be sufficient to demonstrate the accuracy of the fee calculation, and shall include the following information: (i) volumes of recycling collected, in tons, by commodity, with disposition by destination market, for all source separated recycling; (ii) for any approved non-source separated program, the Hauler shall submit to the City by June 30th on annual basis, copies of contracts with processing mills; (iii) for any approved non-source separated program, the amounts, in tons, of recycling collected within Fayetteville, with disposition by destination market. With payment remittance, the City will review and obtain certain trade secret information, including rates, frequency of service, customer lists, other customer information, and contracts with recyclers and processing mills ("Confidential Information"). The City asserts this information is exempt from disclosure under the Arkansas Freedom of Information Act as the information meets the exemption for records that "if disclosed would give advantage to competitors." This information will only be reviewed by City financial staff, and will not be made available to City solid waste staff. Any Hauler found providing services for non-source separated recyclables without prior approval by the City shall be subject to a fee of \$500.00.
8. The City shall have the right to conduct an audit of Hauler's customer files and records for all customers located within the City, provided that such audit privilege shall be limited to once per calendar quarter. If such audit reveals the Hauler should have paid at least 5% more than reported, the cost of the audit shall be paid by the Hauler to the City. During such audit, the City may review and obtain certain trade secret information, including rates, frequency of service, customer lists, and other customer information ("Confidential Information"). This information shall not be divulged to any third party by the City, its employees, officers, or elected officials without the express written consent of the Hauler, or as otherwise required by law. The City asserts this information is exempt from disclosure under the Arkansas Freedom of Information

Act as the information meets the exemption for records that "if disclosed would give advantage to competitors." This information will only be reviewed by City financial staff, and will not be made available to City solid waste staff.

9. The City will advise Hauler of any request for information which the City, at the City's sole discretion, determines to be non-disclosable or otherwise subject to an exemption from disclosure under the Arkansas Freedom of Information Act. If a court of competent jurisdiction determines that said requested information is disclosable or otherwise is not exempt from disclosure under the Arkansas Freedom of Information Act, the City will comply with said finding and notify Hauler. Discovery requests made to the City during the course of any litigation, or any other subpoena or court order issued to the City for information or records related to Hauler and this Agreement, shall be promptly made known to Hauler.
10. Hauler agrees and understands that it shall submit to the City by June 30th on an annual basis: (i) a list of all commercial vehicles used to provide services in the City; (ii) proof of appropriate vehicle registration; (iii) and proof of the insurance required under Section 16.
11. Hauler agrees and understands that it shall provide by June 30th on an annual basis: (i) a list of vehicle operators collecting and hauling waste in the City of Fayetteville; (ii) proof of their valid and appropriate commercial drivers' licenses; (iii) and the provision, maintenance, and implementation of a plan to ensure that the vehicle operators maintain their commercial driver's licenses in accordance with applicable federal and state laws.
12. Hauler agrees that it shall comply with all federal, state and local laws applicable to the safety, environmental and transportation matters related to providing solid waste collection services under this Agreement. Hauler agrees that all open-top roll-off style containers will be properly covered during transit on streets and highways within Fayetteville.
13. The City reserves the right to inspect all vehicles and containers to ensure that the vehicles are safe and well-maintained and that all containers are well-maintained and water tight, if necessary.
14. If Hauler utilizes the City's transfer station, Hauler agrees and understands that it shall be required to establish an individual credit or service relationship with the City of Fayetteville transfer station operator. Hauler agrees that it shall comply with all practices, policies and procedures as established by the transfer station operator from time to time. Any tipping fee deposits required by the transfer station or landfill operators shall be refunded, less any unpaid tipping fees, when the Hauler ceases hauling activities governed by this Agreement.
15. This Agreement has been entered into freely and voluntarily by Hauler which agrees to abide by all of the terms and conditions as a matter of contractual obligation pursuant to applicable City ordinances. This is a contractual Agreement and is not intended to be part of or relate in any way to any license or ordinance created pursuant to A.C.A. §26-77-102.
16. Neither this Agreement, nor any rights or obligations hereunder may be assigned or transferred to any third part or affiliate.
17. For the purpose of this contract, the Point of Contact for the City of Fayetteville shall be the City's Utilities Director. The Point of Contact for the Hauler shall be

BRIAN DEVECSERY. Communications pertaining to day-to-day aspects of this contract shall be through these individuals. Either party may change its designated Point of Contact upon ten (10) days prior written notice to the other party.

18. Hauler agrees to protect, indemnify, defend and save harmless the City, its officials, officers, employees, agents, subcontractors, representatives and assigns from any loss, claim, liability, penalty, fine, forfeiture, demand cause of action, suit and costs and expenses incidental thereto (including costs of defense, settlement and reasonable attorneys' fees), to the extent caused by (i) Hauler's breach of any term, condition, covenant or warranty contained in this Agreement, or (ii) Hauler's negligent act or omission or willful misconduct related to the delivery of waste to the City transfer station or a properly licensed landfill facility.
19. Insurance: Hauler shall maintain the following insurance coverage during the term of this Agreement:
- a) Hauler shall provide and maintain, during the term of this Agreement, comprehensive general liability insurance, to protect against all claims arising out of the performance of its services hereunder that result in bodily injury, death or property damage. The policy or policies shall contain a clause that the insurer will not cancel or decrease the insurance coverage without first giving the City sixty (60) days notice in writing.
 - b) Upon written request, Hauler shall furnish the City with evidence that the insurance required of it is in force.
 - c) City will be added as an additional insured on General Liability and Auto Liability policies.
 - d) The types of coverage and limits of liability of all insurance required herein shall be a follows:

COVERAGE	LIMITS OF LIABILITY
Workmen's Compensation	Statutory
Employer's Liability	\$500,000
Bodily Injury Liability except Automobile	\$1,000,000 each occurrence
Property Damage Liability Except Automobile	\$1,000,000 each aggregate
Automobile Bodily Injury	\$1,000,000 each person
Comprehensive General Liability	\$1,000,000 each occurrence
Automobile Property Damage Liability	\$1,000,000 each occurrence
Excess Umbrella Liability	\$1,000,000 each occurrence

20. Termination:
- a) Except as otherwise provided herein, if Hauler breaches this Agreement or defaults in the performance of any of the requirement or conditions contained herein, and such breach continues for fifteen (15) days after the City has given the Hauler written notice of such breach or default, the City may: (i) terminate this

Agreement no sooner than thirty (30) days after the date of written notice of such breach or default; (ii) cure the breach or default at the expense of the Hauler; and/or (iii) exercise any right or remedy to which it may be entitled by law.

- b) The City may terminate this Agreement upon written notice to the Hauler if the Hauler makes an assignment for the benefit of creditors, or files a voluntary petition in bankruptcy, receivership or insolvency, or files an answer in any involuntary proceeding of that nature admitting the material allegations of the petition, or if a proceeding in bankruptcy, receivership or insolvency shall be instituted and such proceeding is not dismissed within sixty (60) days.
- c) In the event that this Agreement is terminated for any reason, any amounts payable to the City by Hauler for services rendered for any reason whatsoever shall become immediately due and payable as of the date of such termination.

21. All notices required or permitted under this contract shall be submitted in writing to the other party of this contract, by U.S. Mail, which notice shall be effective three (3) days after deposit therein addressed to the following:

City of Fayetteville
Utilities Director
113 West Mountain Street
Fayetteville, AR 72701

HOGGE MFG CO. INC. DBA HOGBOX
Attn: BRIAN DEVECSERY
2900 S. CITY LAKE RD
FAYETTEVILLE, AR 72701

22. Hauler agrees and understands that this Agreement and documents submitted to the City pursuant hereto are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville requesting such non-exempt documents, such non-exempt documents shall be provided in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (Ark. Code Ann. § 25-19-101 et seq.). Only legally authorized photocopying costs may be assessed for this compliance.
23. This Agreement shall be interpreted according to and enforced under the laws of the State of Arkansas. Capitalized terms herein shall have the same meaning as set forth in ADEQ Reg. No. 22.
24. A waiver by either party of any of the terms or conditions herein shall be limited to that particular instance, and shall not be construed as a general waiver of either party's right to seek appropriate remedies for any other breaches by either party.
25. Each paragraph of the Agreement is severable from all other paragraphs. In the event any court of competent jurisdiction determines that any paragraph or subparagraph is invalid or unenforceable for any reason, all remaining paragraphs and subparagraphs shall remain in full force and effect.
26. This contract constitutes the entire understanding of the parties and no Notification or variation of the terms of this contract shall be valid unless made in writing and signed by the duly authorized agents of the City of Fayetteville and the Hauler.
27. Each of the undersigned warrants that he or she has the full right, power, and authority to execute this contract on behalf of the party indicated for the purposes herein contained.

28. To the extent a definition or a specific term is not provided herein but is nonetheless required by the context, it is the intention of the parties to incorporate herein the definitions contained in applicable law and regulation in effect as the date hereof, except to the extent subsequent law or regulation shall expressly or implicitly mandate a revised definition.
29. The obligations of the parties to this Agreement, which by their nature would continue beyond the termination, cancellation or expiration of this Agreement, shall survive the termination (for any reason), cancellation or expiration of this Agreement.

IN WITNESS WHEREOF, we have hereunto set our hands on the date first written above.

CITY OF FAYETTEVILLE

By: _____
LIONELD JORDAN, Mayor

ATTEST:

By: _____
SONDRA SMITH, City Clerk

Hosey MFG Co. Inc. dba HOGBOX

By: *[Signature]*

President

By: *[Signature]*

AGREEMENT TO HAUL AND DISPOSE OF SOLID WASTE & RECYCLING IN THE CITY OF FAYETTEVILLE

This Agreement (the "Agreement"), is entered into on this _____ day of _____ 2012, between the **City of Fayetteville, Arkansas**, a municipal corporation (the "City"), and Waste Management of Arkansas, Inc. (the "Hauler"), and shall be in full force and effect on the date first written above, City and Hauler agree as follows:

1. The term of this Agreement shall be for one (1) year, with the option to renew for one (1) additional year, unless otherwise terminated pursuant to the terms hereof.
2. Hauler agrees that from and after the original date of this Agreement, all customer service Agreements for facilities within the corporate limits of the City, excluding residential areas, entered into before or after the effective date of this Agreement, or renewed shall have terms of no more than one (1) year and any subsequent extensions shall be for terms of no more than one (1) year. No customer service Agreement shall extend the terms of this Agreement.
3. Hauler agrees and understands that it may only collect and haul solid waste using the type equipment commonly referred to as open-top roll-off style containers with capacities of twenty (20) cubic yards or greater, or roll-off style compactor containers with capacities of twenty (20) cubic yards or greater, containing waste generated from industrial, large commercial or construction/demolition activities, or which is classified as Special Waste, Hazardous Waste, grease or any other type Solid Waste which requires special handling or disposal as set forth in ADEQ Reg. No. 22. Hauler shall not collect any Class 1 or Class 4 material in other containers.

Hauler agrees and understands that it may only collect and haul recyclables outside the residential recycling program. Unseparated recyclables shall not be allowed unless Hauler has been given authority by the City to do so on a program specific basis, approval to be determined by the appropriate department director. As of the signing of this agreement, there are two unseparated recycling programs that are approved:
 - a) construction and demolition waste; and
 - b) University of Arkansas event comingled containers.
4. In consideration of the right to provide the hauling of solid waste and/or recyclables described in Item #3 above, Hauler agrees and understands that it shall be required to pay a monthly fee of:
 - a) ten (10%) percent (the "Solid Waste Fee") of the gross revenue received for providing solid waste hauling services
 - b) five (5%) percent (the "Recycling Fee") of the gross revenue received for providing the hauling of the recyclables.
5. Hauler agrees and understands that it may utilize the City's transfer station for all Class 1 waste collected pursuant to this Agreement and shall deliver all Class 4 waste to a properly licensed landfill facility. Hauler shall pay all transfer station fees to the transfer station operator and all landfill fees to the landfill operator, as they may be established and amended, from time to time.
6. Hauler shall pay all fees due hereunder, along with submitting "Attachment A: Solid Waste Documentation", or page 1 of Attachment A in conjunction with an agreed upon vendor

generated report, on or before the 15th of each calendar month for the immediately preceding calendar month. Payments of fees received after the due date shall be assessed a 10% penalty per month. If Hauler fails to pay the fees within forty-five (45) days of the due date, the City may terminate this Agreement upon delivery of one (1) written notice to the Hauler. The supporting information shall be sufficient to demonstrate the accuracy of the fee calculation, and shall include the following information: (i) Hauler's worksheet calculating the fees remitted; (ii) a list of payments received from customers within the City; (iii) such list shall clearly indicate whether each payment was from a permanent or temporary customer, and (iv) the fee shall be based upon all activity from each customer account within the City, and shall include the normal billing charges for all free or discounted services (including those for non-profit organizations) including but not limited to delivery, pull charges, disposal charges, transportation charges, final pull charges, and return charges. With payment remittance, the City will review and obtain certain trade secret information, including rates, frequency of service, customer lists, and other customer information ("Confidential Information"). The City asserts this information is exempt from disclosure under the Arkansas Freedom of Information Act as the information meets the exemption for records that "if disclosed would give advantage to competitors." This information will only be reviewed by City financial staff, and will not be made available to City solid waste staff.

7. Hauler shall pay all fees due hereunder, along with submitting "Attachment B: Recycling Documentation", on or before the 15th of each calendar month for the immediately preceding calendar month. Payments of fees received after the due date shall be assessed a 10% penalty per month. If Hauler fails to pay the fees within forty-five (45) days of the due date, the City may terminate this Agreement upon delivery of one (1) written notice to the Hauler. The supporting information shall be sufficient to demonstrate the accuracy of the fee calculation, and shall include the following information: (i) volumes of recycling collected, in tons, by commodity, with disposition by destination market, for all source separated recycling; (ii) for any approved non-source separated program, the Hauler shall submit to the City by June 30th on annual basis, copies of contracts with processing mills; (iii) for any approved non-source separated program, the amounts, in tons, of recycling collected within Fayetteville, with disposition by destination market. With payment remittance, the City will review and obtain certain trade secret information, including rates, frequency of service, customer lists, other customer information, and contracts with recyclers and processing mills ("Confidential Information"). The City asserts this information is exempt from disclosure under the Arkansas Freedom of Information Act as the information meets the exemption for records that "if disclosed would give advantage to competitors." This information will only be reviewed by City financial staff, and will not be made available to City solid waste staff. Any Hauler found providing services for non-source separated recyclables without prior approval by the City shall be subject to a fee of \$500.00.
8. The City shall have the right to conduct an audit of Hauler's customer files and records for all customers located within the City, provided that such audit privilege shall be limited to once per calendar quarter. If such audit reveals the Hauler should have paid at least 5% more than reported, the cost of the audit shall be paid by the Hauler to the City. During such audit, the City may review and obtain certain trade secret information, including rates, frequency of service, customer lists, and other customer information ("Confidential Information"). This information shall not be divulged to any third party by the City, its employees, officers, or elected officials without the express written consent of the Hauler, or as otherwise required by law. The City asserts this information is exempt from disclosure under the Arkansas Freedom of Information

Act as the information meets the exemption for records that "if disclosed would give advantage to competitors." This information will only be reviewed by City financial staff, and will not be made available to City solid waste staff.

9. The City will advise Hauler of any request for information which the City, at the City's sole discretion, determines to be non-disclosable or otherwise subject to an exemption from disclosure under the Arkansas Freedom of Information Act. If a court of competent jurisdiction determines that said requested information is disclosable or otherwise is not exempt from disclosure under the Arkansas Freedom of Information Act, the City will comply with said finding and notify Hauler. Discovery requests made to the City during the course of any litigation, or any other subpoena or court order issued to the City for information or records related to Hauler and this Agreement, shall be promptly made known to Hauler.
10. Hauler agrees and understands that it shall submit to the City by June 30th on an annual basis: (i) a list of all commercial vehicles used to provide services in the City; (ii) proof of appropriate vehicle registration; (iii) and proof of the insurance required under Section 16.
11. Hauler agrees and understands that it shall provide by June 30th on an annual basis: (i) a list of vehicle operators collecting and hauling waste in the City of Fayetteville; (ii) proof of their valid and appropriate commercial drivers' licenses; (iii) and the provision, maintenance, and implementation of a plan to ensure that the vehicle operators maintain their commercial driver's licenses in accordance with applicable federal and state laws.
12. Hauler agrees that it shall comply with all federal, state and local laws applicable to the safety, environmental and transportation matters related to providing solid waste collection services under this Agreement. Hauler agrees that all open-top roll-off style containers will be properly covered during transit on streets and highways within Fayetteville.
13. The City reserves the right to inspect all vehicles and containers to ensure that the vehicles are safe and well-maintained and that all containers are well-maintained and water tight, if necessary.
14. If Hauler utilizes the City's transfer station, Hauler agrees and understands that it shall be required to establish an individual credit or service relationship with the City of Fayetteville transfer station operator. Hauler agrees that it shall comply with all practices, policies and procedures as established by the transfer station operator from time to time. Any tipping fee deposits required by the transfer station or landfill operators shall be refunded, less any unpaid tipping fees, when the Hauler ceases hauling activities governed by this Agreement.
15. This Agreement has been entered into freely and voluntarily by Hauler which agrees to abide by all of the terms and conditions as a matter of contractual obligation pursuant to applicable City ordinances. This is a contractual Agreement and is not intended to be part of or relate in any way to any license or ordinance created pursuant to A.C.A. §26-77-102.
16. Neither this Agreement, nor any rights or obligations hereunder may be assigned or transferred to any third part or affiliate.
17. For the purpose of this contract, the Point of Contact for the City of Fayetteville shall be the City's Utilities Director. The Point of Contact for the Hauler shall be the District Manager.

Communications pertaining to day-to-day aspects of this contract shall be through these individuals. Either party may change its designated Point of Contact upon ten (10) days prior written notice to the other party.

18. Hauler agrees to protect, indemnify, defend and save harmless the City, its officials, officers, employees, agents, subcontractors, representatives and assigns from any loss, claim, liability, penalty, fine, forfeiture, demand cause of action, suit and costs and expenses incidental thereto (including costs of defense, settlement and reasonable attorneys' fees), to the extent caused by (i) Hauler's breach of any term, condition, covenant or warranty contained in this Agreement, or (ii) Hauler's negligent act or omission or willful misconduct related to the delivery of waste to the City transfer station or a properly licensed landfill facility.

19. Insurance: Hauler shall maintain the following insurance coverage during the term of this Agreement:

- a) Hauler shall provide and maintain, during the term of this Agreement, comprehensive general liability insurance, to protect against all claims arising out of the performance of its services hereunder that result in bodily injury, death or property damage. The policy or policies shall contain a clause that the insurer will not cancel or decrease the insurance coverage without first giving the City sixty (60) days notice in writing.
- b) Upon written request, Hauler shall furnish the City with evidence that the insurance required of it is in force.
- c) City will be added as an additional insured on General Liability and Auto Liability policies.
- d) The types of coverage and limits of liability of all insurance required herein shall be a follows:

COVERAGE	LIMITS OF LIABILITY
Workmen's Compensation	Statutory
Employer's Liability	\$500,000
Bodily Injury Liability except Automobile	\$1,000,000 each occurrence
Property Damage Liability Except Automobile	\$1,000,000 each aggregate
Automobile Bodily Injury	\$1,000,000 each person
Comprehensive General Liability	\$1,000,000 each occurrence
Automobile Property Damage Liability	\$1,000,000 each occurrence
Excess Umbrella Liability	\$1,000,000 each occurrence

20. Termination:

- a) Except as otherwise provided herein, if Hauler breaches this Agreement or defaults in the performance of any of the requirement or conditions contained herein, and such breach continues for fifteen (15) days after the City has given the Hauler written notice of such breach or default, the City may: (i) terminate this

Agreement no sooner than thirty (30) days after the date of written notice of such breach or default; (ii) cure the breach or default at the expense of the Hauler; and/or (iii) exercise any right or remedy to which it may be entitled by law.

- b) The City may terminate this Agreement upon written notice to the Hauler if the Hauler makes an assignment for the benefit of creditors, or files a voluntary petition in bankruptcy, receivership or insolvency, or files an answer in any involuntary proceeding of that nature admitting the material allegations of the petition, or if a proceeding in bankruptcy, receivership or insolvency shall be instituted and such proceeding is not dismissed within sixty (60) days.
 - c) In the event that this Agreement is terminated for any reason, any amounts payable to the City by Hauler for services rendered for any reason whatsoever shall become immediately due and payable as of the date of such termination.
21. All notices required or permitted under this contract shall be submitted in writing to the other party of this contract, by U.S. Mail, which notice shall be effective three (3) days after deposit therein addressed to the following:
- | | |
|--|---|
| City of Fayetteville
Utilities Director
113 West Mountain Street
Fayetteville, AR 72701 | Waste Management
Attn: Market Area Vice President
2555 Meridian Blvd, Suite 200
Franklin, TN 37067 |
|--|---|
22. Hauler agrees and understands that this Agreement and documents submitted to the City pursuant hereto are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville requesting such non-exempt documents, such non-exempt documents shall be provided in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (Ark. Code Ann. § 25-19-101 et seq.). Only legally authorized photocopying costs may be assessed for this compliance.
23. This Agreement shall be interpreted according to and enforced under the laws of the State of Arkansas. Capitalized terms herein shall have the same meaning as set forth in ADEQ Reg. No. 22.
24. A waiver by either party of any of the terms or conditions herein shall be limited to that particular instance, and shall not be construed as a general waiver of either party's right to seek appropriate remedies for any other breaches by either party.
25. Each paragraph of the Agreement is severable from all other paragraphs. In the event any court of competent jurisdiction determines that any paragraph or subparagraph is invalid or unenforceable for any reason, all remaining paragraphs and subparagraphs shall remain in full force and effect.
26. This contract constitutes the entire understanding of the parties and no Notification or variation of the terms of this contract shall be valid unless made in writing and signed by the duly authorized agents of the City of Fayetteville and the Hauler.
27. Each of the undersigned warrants that he or she has the full right, power, and authority to execute this contract on behalf of the party indicated for the purposes herein contained.

28. To the extent a definition or a specific term is not provided herein but is nonetheless required by the context, it is the intention of the parties to incorporate herein the definitions contained in applicable law and regulation in effect as the date hereof, except to the extent subsequent law or regulation shall expressly or implicitly mandate a revised definition.
29. The obligations of the parties to this Agreement, which by their nature would continue beyond the termination, cancellation or expiration of this Agreement, shall survive the termination (for any reason), cancellation or expiration of this Agreement.

IN WITNESS WHEREOF, we have hereunto set our hands on the date first written above.

CITY OF FAYETTEVILLE

WASTE MANAGEMENT

By: _____
LIONELD JORDAN, Mayor

By: 
TIM WELLS, Vice President

ATTEST:

By: _____
SONDRA SMITH, City Clerk

By: _____

Attachment A: Solid Waste Documentation

Due on or before the 15th of each calendar month for the immediately preceding calendar month.
Payments of the fees received after the due date shall be assessed a 10% penalty per month.

Hauler: _____

Month/Year: _____

- 1 Number of permanent customer accounts within Fayetteville City limits for the month reported. _____

- 2 Number of temporary customer accounts within Fayetteville City limits for the month reported. _____

- 3 Total number of containers placed with all your customer accounts within Fayetteville City limits for the month reported. _____

- 4 For each account identified above, please complete page two of this attachment.

- 5 Page two of this attachment should include all normal billing charges for free, donated, or discounted services. These normal billing charges should include but not be limited to delivery, pull charges, disposal charges, transportation charges,

- 6 Total fee remitted to the City of Fayetteville for the month reported.
(10% of gross revenue received for month) \$ _____

I swear or affirm that all of the information provided above and on all attached form is true, correct, and complete to the best of my knowledge and belief.

The City asserts this information is exempt from disclosure under the Arkansas Freedom of Information Act as the information meets the exemption for records that "if disclosed would give advantage to competitors."

Printed Name

Title

Signature

Phone Number

Date

Attachment A: Solid Waste Documentation

Solid Waste Revenue Monthly Report

Month/Date	Customer #	Customer Name	Temp/Perm	Total Containers	Total Pulls	Monthly Revenues	Billing Charges for Donated/Discounted

Total Monthly Revenues & Billing Charges \$ _____ \$ _____
10% Fee to be Remitted to the City \$ _____

The City asserts this information is exempt from disclosure under the Arkansas Freedom of Information Act as the information meets the exemption for records that "if disclosed would give advantage to competitors."

Attachment B: Recycling Documentation

Hauler: _____

Month/Year: _____

Commodity	Total Tons	Processor / Mill Name	City	State	Number of Loads To Date	End Market / Use
Aluminum Cans						
Mixed Glass						
Cardboard						
Chipboard						
Clear Glass						
Green Glass						
Mixed paper						
Newspaper						
Steel Cans						
Scrap Metal						
# 1 Bottles						
# 2 Bottles						
# 3-7 Bottles						
Other: _____						
Other: _____						

Recycling Totals: -

I swear or affirm that all of the information provided above and on all attached form is true, correct, and complete to the best of my knowledge and The City asserts this information is exempt from disclosure under the Arkansas Freedom of Information Act as the information meets the exemption for records that "if disclosed would give advantage to competitors."

