



Roll Call Number

20-D76D

Agenda Item Number

33

Date May 4, 2020

APPROVING HOUSEHOLD HAZARDOUS WASTE SERVICE AGREEMENT WITH METRO WASTE AUTHORITY FOR WASTE DROP-OFF AT MWA COLLECTION CENTER

WHEREAS, Metropolitan Waste Authority (MWA) has established and operates a permanent collection center for Household Hazardous Waste (“HHW”), with a permanent collection center in Bondurant known as the Metro Hazardous Waste Drop-off (“MHWD”); and

WHEREAS, the Public Works Department operates the Neighborhood SCRUB program and is desirous of collecting and transporting the HHW collected from that program to the MHWD for disposal and MWA is desirous of facilitating the Neighborhood SCRUB program; and

WHEREAS, MWA has agreed that the Public Works Department may use its own trailer for the collection and transporting of HHW to the MHWD for disposal and to accept the disposal of such at no cost to the City, except for costs incurred for unacceptable wastes; and

WHEREAS, the MWA requires that a Household Hazardous Services Agreement be entered into for acceptance of HHW delivered to the MHWD by the City, including the City’s agreement to indemnify the MWA from liability arising from the Neighborhood SCRUB events, for the period of three years commencing on March 15, 2020 and thereafter for automatic one-year renewals, unless terminated by either party, a copy of which is on file in the City Clerk’s Office.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa that the above described Household Hazardous Waste Service Agreement between the City of Des Moines and the Metro Waste Authority be and is hereby approved, and the Mayor is hereby authorized to execute such Agreement on behalf of the City and City Clerk is directed to attest to his signature.

BE IT FURTHER RESOLVED, that the City Manager is authorized to execute any renewal or termination of such Agreement and any operational or administrative amendments to such Agreement, subject to approval as to form by the Legal Department.

(Council Communication No. 20-188)

Moved by Gatto to adopt.

APPROVED AS TO FORM:

Ann DiDonato
Ann DiDonato, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
BOESEN	✓			
GATTO	✓			
GRAY	✓			
MANDELBAUM	✓			
VOSS	✓			
WESTERGAARD	✓			
TOTAL	7			

MOTION CARRIED APPROVED
J. M. Franklin Cownie Mayor

CERTIFICATE

I, P. Kay Cmelik, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

P. Kay Cmelik City Clerk

Household Hazardous Material Service Agreement

This **Household Hazardous Material Service Agreement** (this "Agreement") is made this 15th day of May, 2020, by and between the **City of Des Moines, Iowa**, a municipal corporation, whose address is 400 Robert Ray Dr., Des Moines, Iowa 50309 (the "**Member City**"), and **Metro Waste Authority**, an intergovernmental agency formed pursuant to chapter 28E of the Code of Iowa, whose address is 300 East Locust St., Des Moines, Iowa 50309 ("**MWA**").

WHEREAS, MWA has established and operates a permanent collection center for Household Hazardous Material ("**HHM**") (as defined below), which permanent collection center is known as the Metro Hazardous Waste Drop-off ("**MHWD**");

WHEREAS, the Member City has established a collection program for HHM and is desirous of collecting and transporting the HHW to the MHWD for disposal;

WHEREAS, the Member City may use its own trailer (the "**Member City Trailer**") for the collection and transporting of HHM to the MHWD for disposal;

NOW THEREFORE, MWA and Member City agree that, subject to the terms and conditions set out below, the HHM collected by the Member City may be transported to MHWD for disposal.

Section I: Definitions

The following definitions shall apply to this Agreement:

- A. Household Hazardous Waste ("**HHW**") shall mean material that would be classified as hazardous waste by 40 CFR 261.20 through 261.35 but that is exempt under 40 CFR 261.4(b)(1) because it is generated by households.
- B. Household Hazardous Material ("**HHM**") shall mean a product used for residential purposes and designated by rule of the Iowa Department of Natural Resources and may include any hazardous substance as defined in section 455B.411, subsection 2; and any hazardous waste as defined in section 455B.411, subsection 3; and shall include but is not limited to the following materials: motor oils, motor oil filters, gasoline and diesel additives, degreasers, waxes, polishes, solvents, paints, with the exception of latex-based paints, lacquers, thinners, caustic household cleaners, spot and stain remover with petroleum base, and petroleum-based fertilizers. However, "household hazardous material" does not include laundry detergents or soaps, dishwashing compounds, chlorine bleach, personal care products, personal care soaps, cosmetics, and medications.
 - Exclusions: HHM that will not be accepted through mobile collection events as a part of this Agreement include Regulated Substances, latex based paint, lead acid batteries, ammunition, asbestos, compressed gas cylinders, explosives, fire extinguishers, or radioactive materials.
- C. Regulated Substances shall mean substances defined as "regulated substances," "hazardous waste," "hazardous materials," "toxic substances," or "pesticides" in one or more of the following: the Resource Conservation and Recovery Act as amended by the Hazardous and Solid Waste Amendment of 1984, the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Materials Transportation Act, the Toxic Substance Control Act, the Federal Insecticide, Fungicide and Rodenticide Act, the relevant local or state environmental laws, or the regulations, rules and ordinances adopted and publications, standards and guidelines promulgated pursuant to the state or federal laws.
- D. Very Small Quantity Generators ("**VSQG**") shall mean a hazardous waste generator that generates less than 1 kilogram (2.2 pounds) per month of acute hazardous waste and never stores more than this amount on site at any time and generates less than 100 kilograms (220 pounds) of all other hazardous waste and never stores more than 1,000 kilograms (2,220 pounds) on site at any time and is further modified by 40 CFR 261.5 (f)(2), and (g)(2).
- D. Member City shall mean the City of Des Moines, Iowa.
- E. Member City Trailer shall mean a trailer owned by the Member City that is capable of collecting and transporting the HHM.
- F. Eligible Resident is any resident, excluding businesses, residing within the jurisdiction of the Member City.

- F. Eligible Business is any business within the jurisdiction of Member City that meets the definition of a VSQG and that complies with the necessary pre-qualifying and drop-off procedures of MWA and the Member City.
- G. Metro Hazardous Waste Drop-off ("MHWD") shall mean MWA's permanent household hazardous waste collection center located at 1105 Prairie Dr. SW, Bondurant, IA 50035.
- H. Mobile Collections Event means a unit that can be moved to different sites within a service area. The mobile unit is used to perform collection events and to transport collected materials to the MHWD.

Section II: Purpose

The purpose of this Agreement is to provide for the disposal of HHM collected by the Member City.

Section III: Effective Date

- A. Term: This Agreement shall become effective on May 15, 2020 and shall continue for three years thereafter. This Agreement hereby terminates the Household Hazardous Waste Service Agreement entered into by the MWA and the Member City in 2017.
- B. Renewal: This Agreement shall automatically renew for successive terms of one (1) year each, provided that this Agreement has not been terminated by either party pursuant to paragraph C below.
- C. Termination: A party may terminate this Agreement at any time by notifying the other party in writing no less than 30 days prior to the stated termination date. Such termination shall not relieve either party from those liabilities or costs already incurred pursuant to this Agreement.

Section IV: HHM Collections Services

- A. Permanent MHWD Services: MWA agrees to accept HHM delivered to the MHWD from Eligible Residents or, by appointment, Eligible Businesses located within jurisdiction of Member City.
- B. Additional Service: The Member City may request additional service. If additional service is needed, the Member City shall identify the service requested. Arrangements and additional fees will be negotiated prior to the initiation of any such additional service.
- C. Very Small Quantity Generators (VSQGs): VSQGs may use the MHWD for disposal of hazardous wastes by appointment during the hours of normal operation. The MHWD shall require payment for disposal of waste from VSQGs, by the VSQG to the MHWD, based upon established fees. VSQGs will not be permitted to drop off waste material at Spring Cleanup to Reduce Urban Blight (SCRUB) events.
- E. Record Keeping: MWA agrees to keep records of the use of the MHWD in order to provide Member City with information regarding the use of the facility.

Section V: Responsibilities of MWA

MWA Responsibilities:

- i. MWA shall provide for the proper disposal of all eligible HHM delivered to the MHWD by the Member City.
- ii. MWA will supply a SCRUB HHM Operations Plan, Emergency Response and Remedial Action Plan (ERRAP) and all necessary containers, personal protective equipment, and spill control required for the collection of HHM.
- iii. MWA will (1) stock the Member City Trailer with supplies prior to collection, (2) empty the Member City Trailer of eligible HHM after collection, (3) restock the Member City Trailer with supplies, and (4) have the Member City Trailer ready to be picked up by Member City within two business days of drop off.

Section VI: Responsibilities of the Member City

Member City Responsibilities:

- i. The Member City shall provide for the proper collection and transportation of all eligible HHM delivered to the MHWD by the Member City.
- ii. The Member City will be responsible to deliver the eligible HHM in the Member City Trailer to the MHWD within two (2) business days following the collection event.
- iii. The Member City will be responsible for retrieving the Member City Trailer within two business days following delivery.
- iv. The Member City shall also be responsible for keeping up-to-date proper staff training, dissemination of the Operations Plan and ERRAP and driving permits necessary for the HHM collection event.
- v. The Member City will track usage of collections through surveys provided by MWA.

- vi. The Member City will be responsible for supplies not provided by MWA, such as the Member City Trailer, tools, tables, carts, drum truck and pallet jack.
- vii. Member City will be responsible for maintaining and updating an Operations Plan and ERRAP for the collection of HHM at its SCRUB events.

Section VII: Costs

All costs of collection and transportation to the MHWD shall be paid for by the Member City. The cost of disposal of HHM shall be paid by MWA. The Member City may be responsible for disposal costs for unacceptable wastes. The Member City will incur costs for annual training and permits and promotion of collection event.

Section VIII: Hold Harmless and Indemnification-Mutual

A. Member City Indemnification: To the fullest extent permitted by law, the Member City agrees to indemnify and hold harmless MWA, its elected and appointed officials, board, employees and volunteers and others working on behalf of MWA against any and all claims, demands, suits, or loss, including any and all outlay and expense connected therewith, and for any damages which may be asserted, claimed or recovered against or from MWA, its elected and appointed officials, board, employees and volunteers and others working on behalf of MWA, including by reason of personal injury, including bodily injury or death, and property damages, including loss of use thereof, which arise out of the negligence or willful acts or omissions of the Member City, its elected and appointed officials, employees and volunteers and others working on behalf of the Member City arising from or with respect to its fulfilling its obligations under this Agreement. This indemnification requirement shall survive the termination or expiration of this Agreement.

B. MWA Indemnification: To the fullest extent permitted by law, MWA agrees to indemnify and hold harmless the Member City, its elected and appointed officials, employees and volunteers and others working on behalf of the City against any and all claims, demands, suits, or loss, including any and all outlay and expense connected therewith, and for any damages which may be asserted, claimed or recovered against or from the City, its elected and appointed officials, employees and volunteers and others working on behalf of the City, including by reason of personal injury, including bodily injury or death, and property damages, including loss of use thereof, which arise out of the negligence or willful acts or omissions of MWA, its elected and appointed officials, employees and volunteers and others working on behalf of MWA arising from or with respect to its fulfilling its obligation under this Agreement. This indemnification requirement shall survive the termination or expiration of this Agreement.

Section IX: Insurance

The Member City shall provide general liability insurance coverage to protect itself and MWA against any liability which could result from the operation or acceptance, storage, processing or shipment of HHM at a Mobile Collections Event. This insurance policy shall also cover any truck, any trailer, and the site at which the Mobile Collections Event will be held. Prior to May 15, 2020, the Member City shall submit to MWA a copy of the certificate of insurance attesting that the Member City holds an adequate level of insurance as set forth herein. The Member City shall also submit to MWA a copy of the Certificate of Insurance attesting that the Member City holds workers' compensation and employers' liability that meets or exceeds the requirements of MWA. The Member City shall maintain requisite levels of insurance for the Term of this Agreement.

MWA shall purchase and maintain general liability, auto liability and workers' compensation insurances. Prior to March 1, 2020, MWA shall submit to the Member City a copy of the certificate of insurance attesting that MWA holds an adequate level of insurance as set forth herein.

Section X: Limitation of Liability

Neither party will be liable to the other party or for any special, punitive, consequential, incidental or exemplary damages (including lost or anticipated revenues or profits relating to the same and attorneys' fees) arising from any claim relating to this Agreement or any of the services to be provided under this Agreement, or the performance of or failure to perform such party's obligations under this Agreement, whether such claim is based on warranty, contract, tort (including negligence or strict liability) or

otherwise, and regardless of whether such damages are foreseeable or an authorized representative of such party is advised of the possibility or likelihood of such damages

Section XI: Compliance with Laws

Each party agrees to comply with all applicable federal, state and local laws in the collection, transportation, or operation of the MHWB and its respective performance under this Agreement, including applicable Department of Transportation regulations at 49 CFR Part 107, and any applicable state or local laws. Each party shall not discriminate or permit discrimination in its operations or employment practices against any person or group of persons on the grounds of race, color, creed, national origin, gender, age, sex, religion, sexual orientation, Gender identify, familial status or disability and shall furnish evidence of compliance with this provision when so requested by the other party.

Section XII: Relationship of the Parties

The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

Section XIII: Non-Solicitation of Employees and Others

During the Term and for six months thereafter, each party shall not hire or solicit for employment any employee of the other party without written consent by the other party. In the event that a party hires or solicits an employee of the other party in breach of this section, damages for such breach shall be equal to the demonstrated cost of hiring and training a replacement for such individual and any reasonable out-of-pocket expenses (including attorneys' fees).

Section XIV: Notices

All notices and communications required or permitted to be given hereunder shall be in writing and shall be delivered personally, or sent by overnight courier or mailed by certified or registered United States Mail with all postage fully prepaid, or sent by electronic mail ("email") transmission (provided that a receipt of such email is requested by the notifying party and affirmatively acknowledged by the receiving party), addressed to the appropriate party at the address for such party shown below:

Notices to City of Des Moines:

City of Des Moines
400 Robert Ray Dr.
Des Moines, Iowa 50309
Email: JKFarrell@DMGov.org

Notices to Metro Waste Authority:

Metro Waste Authority
300 East Locust St.
Des Moines, Iowa 50309
Email: kfi@mwatoday.com

It is understood that either party may change the address to which notices for it shall be addressed by providing notice of such change to the other party in the manner set forth in this section.

Section XV: Waiver

No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.

Section XVI: Severability

If any provision of this Agreement is held to be void and unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement nevertheless shall be binding upon the parties with the same effect as though the void or enforceable part has been severed and deleted.

Section XVI: Entire Agreement; Amendment

This Agreement constitutes the entire agreement of the parties relating to the matters contained herein, superseding all prior contracts or agreements, whether written or oral, relating to the matters contained herein. This Agreement may be altered only by a written amendment identified as such and signed by authorized personnel of both parties. All such amendments to this Agreement will be binding on both parties despite any lack of consideration.

Section XVII: Choice of Law, Jurisdiction and Venue

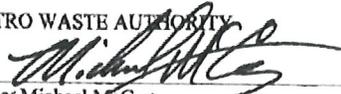
This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Iowa. The parties agree that Polk County, Iowa will be the venue of any dispute and will have jurisdiction over all the parties.

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

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

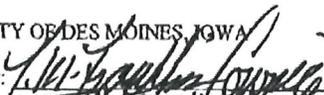
MWA:

METRO WASTE AUTHORITY

By: 
Name: Michael McCoy
Its: Executive Director

MEMBER CITY:

CITY OF DES MOINES, IOWA

By: 
Name: JULIE FRANKLIN
Its: Mayor

attest
