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FINANCE & RECORDS

MEMO

To: Gregg Mandsager, City Administrator

From: Nancy A. Lueck, Finance Director

Date: October 9, 2015

Re: Request to Approve Updated Memorandum of Understanding (MOU) with the Iowa Department of Administrative Services (DAS) for the City's Participation in the State Income Offset Program

Introduction and Background:

The Income Offset program is a method to collect money owed to the State or other governmental agencies by matching records of claims past due to the State or local governments to out-going State tax refunds, vendor payments, Iowa Treasure Hunt payments, and Iowa Lottery winnings. The City began using the State Income Offset Program in 2009 to collect unpaid ambulance bills. In 2014 the City expanded use of this program to collect unpaid Automatic Traffic Enforcement (ATE) fines.

Updated Memorandum of Understanding:

The Department of Administrative Services recently updated the language in the Memorandum of Understanding agreements with participating entities. The MOU update centers on the appeal process participants must have in place. The City of Muscatine has had an appeal process in place but staff is in the process of formalizing this process.

Recommendation:

Please include the attached Memorandum of Understanding to continue participation in the State's Income Offset Program on the agenda for the October 15, 2015 Council meeting. Please contact me if you have any questions or need additional information.

MEMORANDUM OF UNDERSTANDING
between
The Iowa Department of Administrative Services
State Accounting Enterprise
and
City of Muscatine

for
Participation in the INCOME OFFSET PROGRAM

SECTION 1. Identity of the Parties. The parties to this Memorandum of Understanding (MOU) are the Iowa Department of Administrative Services, State Accounting Enterprise (DAS/SAE), and City of Muscatine (Public Agency).

SECTION 2. Purpose. The purpose of this MOU is to set forth the terms and conditions between DAS/SAE and Public Agency for reimbursement of offsetting liabilities owed to Public Agency as authorized in Iowa Code section 8A.504 and 11 Iowa Administrative Code (IAC) 40, et seq.

SECTION 3. Eligibility. To be eligible for offset, both the debt ("debt" means the liability owed to the Public Agency by a member of the public), and the claim ("claim" means the liability owed by the Public Agency to a member of the public), shall be in the form of a liquidated sum due, owing and payable. All applicable remedies with regard to such a debt and claim must be exhausted or the time frame for exhaustion must have expired as a condition precedent for eligibility to participate in the offset program, provided in 11 IAC 40.3 (3).

SECTION 4. Compensation.

4.1 Fee. The parties agree that in exchange for participation in the offset program, DAS/SAE shall charge a fee of seven dollars (\$7.00) (the "fee") to the Public Agency to which the debt is owed for each individual debt that is placed in the offset program. The fee is to recover costs incurred by DAS/SAE in administering the offset program.

4.2 Deduction when Debt is Offset. If a debt is offset by DAS/SAE under this program, the fee will be deducted from the gross proceeds collected through offset. The fee will be charged for each individual offset event related to an individual debt.

4.3 Billing upon Termination. Following written notice of termination of this MOU, as provided in Section 7 below, DAS/SAE shall be entitled to compensation. DAS/SAE shall submit an invoice and proof of claim to the Public Agency within sixty (60) days of the receipt of the written notice of termination as required under Section 7 below.

4.4 Fee Review. DAS/SAE shall periodically review the costs of administering the offset program. Per Section 9.2 of this MOU, proposed adjustments to the specified fee shall require an amendment.

SECTION 5. DAS/SAE's Responsibilities.

5.1 Offset of Debt. DAS/SAE shall offset liabilities owed to Public Agency by implementing an offset program for Public Agency, developed and managed by DAS/SAE in accordance with **Iowa Code chapter 8A and 11 Iowa Administrative Rules 40.**

5.2 Compliance with AGA. DAS/SAE will comply with the Accountable Government Act, Iowa Code chapter 8E, in the performance of this MOU.

5.3 Refund of Balance after Offset. Before issuing an authorized payment to a debtor, DAS/SAE shall request verification of the claim pursuant to subrule 40.5. If notification is not made to DAS/SAE by the Public Agency within forty-five (45) days, the amount of the payment shall be released to the debtor or entity. DAS/SAE will apply the offset to the debt only after the Public Agency has notified the debtor as prescribed in subrule 40.4(4). DAS/SAE shall then refund any balance amount due from the Public Agency to the debtor or entity.

SECTION 6. Public Agency's Responsibilities.

6.1 Offset Eligibility Program. The Public Agency shall be responsible for developing and maintaining a system for reporting debts eligible for offset and any subsequent claims associated with those debts as required under Iowa Code section 8A.504 and 11 IAC chapter 40 to DAS/SAE at Public Agency's expense.

6.1.1 Minimum Debt Amount. Before a debt may be placed into the offset program, the amount of a debtor's original liability must be at least \$50, except when the source of the claim is a tax refund or tax rebate, in which case the debt may be as low as \$25.

6.1.2 Debtor's opportunity to challenge placement of debt in offset program. Before a debt may be placed into the offset program, the Public Agency must have:

- a.* Made a good faith effort to collect the debt through other means;
- b.* Provided the debtor advance notice that the debt will be placed in the offset program if not paid when due; and
- c.* Provided a formal or informal opportunity for the debtor to challenge placement of the debt into the offset program, as described in 11 IAC 40.3(4).

6.2 Formatting Requirements of Debtor Lists. The Public Agency shall provide the list of debtors it wishes to place into the offset program in a format and type prescribed by DAS/SAE.

6.3 Proof of Liability. Public agencies may only place debts into the offset program if the debts are legally enforceable. To establish enforceability the debt shall have been confirmed by mutual agreement of the parties or have been reduced to a final judgment or final agency determination that is no longer subject to appeal, certiorari, or judicial review, or has been affirmed through appeal, certiorari, or judicial review.

6.4 Notification of Changes. The Public Agency shall notify DAS/SAE within thirty (30) calendar days of any changes in the status of a debt to the state.

6.5 Semi-Annual Certification. The Public Agency shall provide on at least a semi-annual basis, certification of the liability file as prescribed by DAS/SAE.

6.6 Debtor Notification. The Public Agency shall comply with 11 IAC 40.4 when sending notifications to the debtor under this MOU which shall occur within ten (10) calendar days from the date Public Agency was notified by the DAS/SAE of a potential offset.

6.7 Payment of Residual Funds to Debtor. It is the responsibility of the Public Agency to reimburse the debtor for the difference between the amount of liability payable and the amount of the claim payable to the debtor.

6.8 Appeal Process. The Public Agency must provide an appeal process for debtors to challenge each offset after debtors are notified of a potential offset event. The appeal process shall include notice to the debtor and an opportunity for the debtor to contest the amount of the debt through a contested case procedure under Iowa Code chapter 17A or a substantially equivalent process, in accordance with Iowa Code section 8A.504(2)(f) and 11 IAC 40.4(6).

SECTION 7. Termination. This MOU shall remain in full force and effect until terminated or cancelled for convenience by written notice of the party wishing to cancel the MOU. Each party agrees to provide the other party with a sixty (60) day written notice of any intent to terminate this MOU. Either party may terminate without advance notice to the other at any time upon a material breach of the Agreement, or violation of Iowa Code section 8A.504 or 11 IAC chapter 40.

SECTION 8. Confidentiality of Information. Information shared between DAS/SAE and the Public Agency shall be deemed confidential pursuant to Iowa Code section 8A.504(2)(b) and shall be disclosed only to the extent necessary to sufficiently identify the debtor(s) liable to the public agency. Identifying information is to be used only for the purpose of participation in the offset program.

SECTION 9. MOU Administration.

9.1 Compliance with the Law. The parties, their employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders when performing services under this MOU, including without limitation, all laws applicable for the prevention of discrimination in employment and the use of targeted small businesses as subcontractors or suppliers. The parties, their employees, agents and subcontractors shall also comply with all federal, state and local laws regarding business permits and licenses that may be required to carry out the activities performed under this MOU.

9.2 Amendments. This MOU may only be amended in writing by mutual consent of the parties. All amendments to this MOU must be in writing and fully executed by the parties.

9.3 Third Party Beneficiaries. There are no third party beneficiaries to this MOU. However, this MOU is intended to benefit the citizens and governments in the State of Iowa as well as DAS/SAE and Public Agency.

9.4 Assignment and Delegation. This MOU may not be assigned, transferred or conveyed in whole or in part without the prior written consent of the other party. For the purpose of construing this clause, a transfer of a controlling interest in Public Agency shall be considered an assignment.

9.5 Integration. This MOU represents the entire MOU between the parties regarding participation in the offset program. The parties shall not rely upon any representation that may have been made which is not included in this MOU.

9.6 Headings or Captions. The paragraph headings or captions used in this MOU are for identification purposes only and do not limit or construe the contents of the paragraphs.

9.7 Supersedes Former Agreements. This MOU supersedes all prior Agreements between the parties for services regarding participation in the offset program.

9.8 Notice. Notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing which shall be addressed to each party as set forth as follows:

If to DAS/SAE:

Calvin McKelvogue, Chief Operating Officer
Department of Administrative Services State Accounting Enterprise
1305 East Walnut Street
Hoover State Office Building, Level 3
Des Moines, IA 50319

If to Public Agency:

Nancy A. Lueck, Finance Director
Authorized Representative

215 Sycamore Street
Mailing Address

Muscatine, Iowa 52761
City, State, Zip Code

If a party changes its designated person and/or address hereunder, such change shall be in writing as provided herein.

9.9 Severability. If any provision of this MOU is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this MOU.

9.10 Non-Appropriation. In the event a non-appropriation, de-appropriation, or other legislative or gubernatorial action significantly impairs DAS/SAE's budget or ability to perform the terms of this agreement, DAS/SAE may immediately terminate this Agreement.

9.11 Indemnification. The following indemnification provisions shall apply to Public Agencies that are not agencies of the State of Iowa subject to Iowa Code chapter 669 and Iowa Code section 679A.19.

9.11.1 Public Agency agrees to defend, indemnify and hold DAS/SAE and the State of Iowa, its officers, employees and agents, harmless from any and all liabilities, damages, losses, demands, causes of action, claims, settlements, judgments, costs, expenses, and attorney fees, including a reasonable cost attributed to the services of the Attorney General, related to or arising from any violation of this Agreement, any negligent or intentional act or omission of Public Agency, its officers, employees, or agents, and any failure of Public Agency, its officers, employees, or agents to comply with all applicable local, state, and federal laws, rules, and regulations.

9.11.2 Consistent with Article VII, Section 1 of the Iowa Constitution, Iowa Code chapter 669, and other applicable law, DAS/SAE agrees to defend and indemnify Public Agency and hold Public Agency harmless against all losses, costs, damages, expenses, attorney fees, claims, demands, causes of action, judgments, and settlements arising out of the negligence or wrongful acts or omissions of DAS/SAE or its officers, employees or agents in the performance of this Agreement. DAS/SAE shall not defend, indemnify or hold harmless Public Agency or its officers, employees, or agents for any acts or omissions of any type attributable to Public Agency or its officers, employees, or agents.

Section 10. Execution

This MOU is fully executed by the following signatures:

IOWA DEPARTMENT OF ADMINISTRATIVE SERVICES:

Janet E. Phipps Burkhead, Director
Iowa Department of Administrative Services

Date

PUBLIC AGENCY:

Authorized Representative

Date

City of Muscatine
Public Agency

DeWayne Hopkins
Printed Name of Authorized Representative

Ma or
Title