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Finance and Records

To: Greg Jenkins, Interim City Administrator
From: Nancy A. Lueck, Finance Director
Date: June 15, 2020
Re: Resolution Approving Extension of Two Transfer Station/Landfill Industrial Contracts

Introduction and Background:

The City established the current \$60 per ton Transfer Station tipping fee effective July 1, 2009. The City Council approved a resolution on September 17, 2009 adopting a rate of \$50.00 per ton for industrial contracts entered into by companies meeting the minimum tonnage requirement. Per the agreements, these companies pay their tipping fees directly to the City instead of their waste hauler. There are three companies under the original industrial contracts.

In 2010 the Muscatine Chamber of Commerce formed the Landfill/Transfer Station Committee to review the financial status of the City's Landfill. This Committee recommended that the City authorize additional industrial contracts at negotiated rates to increase the waste volume at the Transfer Station and Landfill. City Council adopted a resolution authorizing the use of negotiated industrial contracts on October 17, 2010. Three contracts were added in November and December of 2010 and these contracts were for three year terms. In November of 2013 the regular and the negotiated industrial waste contracts were all extended through June 30, 2015. In November of 2014, the regular and negotiated contracts were all further extended through June 30, 2020. With that extension, the regular contracts were reduced by \$5.00 per ton to \$45.00 per ton and the negotiated contracts were each reduced by \$2.50 per ton.

Summary and Recommendation:

City staff has been in contact with representatives of the companies with industrial waste contracts. Agreements have been reached with two of the companies. These agreements each reflect a reduction of \$2.50 per ton and are five-year extensions of the current agreements through June 30, 2025. The other four contracts have not yet been finalized.

Please include the attached resolution approving the extension of the Industrial Waste contracts with Grain Processing Corporation and SSAB on the agenda for the June 18, 2020 City Council meeting.

RESOLUTION NO. 2020-0218

**RESOLUTION APPROVING THE EXTENSION
OF TWO INDUSTRIAL CONTRACTS
FOR THE MUSCATINE TRANSFER STATION/LANDFILL**

WHEREAS, the City Code of the City of Muscatine, Iowa, Title 13, Chapter 4, Section 11, provides for the establishment of solid waste disposal rates with the fees to be set by Resolution of the City Council; and

WHEREAS, the City Council previously established the fee of \$60.00 per ton for disposal of regular waste at the Transfer Station effective July 1, 2009; and

WHEREAS, City Council wishes to encourage area industries to utilize the Transfer Station for the disposal of their solid waste; and

WHEREAS, City Council previously adopted a resolution on September 17, 2009 to allow for qualifying industries to enter into Industrial Contract agreements for disposal of their solid waste; and

WHEREAS, City Council previously adopted a resolution on October 7, 2010 providing for additional contracts at the industrial rate less negotiated discounts; and

WHEREAS, in November of 2013 the original industrial contracts and the subsequent negotiated contracts were extended through June 30, 2015; and

WHEREAS, the industries with industrial contracts agreed to extend their contracts through June 30, 2020 with a \$5.00 per ton reduction in the rate for the regular industrial contracts (to \$45.00 per ton) and a \$2.50 per ton reduction in the negotiated contract rates.

WHEREAS, an agreement has been reached with Grain Processing Corporation to extend their regular industrial contract for an additional five years at a rate of \$42.50 per ton; and an agreement has been reached with SSAB to extend their negotiated industrial contract for an additional five years at a rate of \$40.00 per ton;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MUSCATINE, IOWA, that pursuant to the provisions of the City Code of the City of Muscatine, Iowa, that these two Transfer Station Industrial Contracts be extended through June 30, 2025

PASSED, APPROVED, AND ADOPTED this 18th day of June, 2020.

Diana Broderson, Mayor

ATTEST:

Greg Jenkins, Interim City Administrator

WASTE DISPOSAL AGREEMENT

This Waste Disposal Agreement (“Agreement”) is made as of _____, 2020, by and between SSAB Iowa, Inc. (“SSAB”), an Iowa corporation, and the City of Muscatine, Iowa, a municipal corporation organized under the laws of the State of Iowa (“City”).

RECITALS

SSAB operates an industrial facility in Muscatine County, Iowa (the “Facility”), and the City owns and operates a recycling center and transfer station and a landfill in Muscatine County, Iowa. The purpose of this Agreement is to set forth the parties’ Agreement regarding the disposal of certain waste produced at the Facility, under the terms and conditions set forth in this Agreement.

In consideration of the mutual covenants set forth in this Agreement and other valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the parties agree as follows:

1. **DEFINITIONS.** The following terms used in this Agreement shall have the indicated meanings when used in this Agreement:
 - a. “Waste” means solid waste including durable goods, non-durable goods, containers and packaging, food waste, and miscellaneous and organic waste, but specifically excluding industrial waste produced at the Facility, and hazardous waste or special waste as defined by the applicable federal laws of the United States.
 - b. “Transfer Station” means the Muscatine Recycling Center and Transfer Station owned and operated by the City and located at 1000 South Houser Street, Muscatine, Iowa.
 - c. “Landfill” means the Muscatine County Landfill owned and operated by the City and located at 3700 Highway 61 North, Blue Grass, Iowa.
 - d. “Contract Year” means any one of the following periods of time during the Term: July 1, 2020 through June 30, 2021, July 1, 2021 through June 30, 2022, July 1, 2022 through June 30, 2023, July 1, 2023 through June 30, 2024, or July 1, 2024 through June 30, 2025.
 - e. “Services” means the City’s acceptance and disposal of the Waste delivered to it pursuant to this Agreement.

2. DISPOSAL OF WASTE.

- a. During the Term, SSAB shall deliver to the Transfer Station a minimum of 1,000 tons of Waste during each Contract Year. SSAB shall separately contract for hauling of the Waste from the Facility to the Transfer Station. SSAB's contract with the waste hauler shall require that the Waste be hauled in an enclosed truck or a covered container.
- b. The City will accept the Waste from SSAB at the Transfer Station during its normal business hours, which are 7:00 a.m. through 3:30 p.m., Monday through Friday and Saturday 8:00 a.m. through 12:00 p.m. The Transfer Station is closed on the following holidays: New Years Day; President's Day; Memorial Day; July 4; Labor Day; Veterans' Day; Thanksgiving Day; the Friday after Thanksgiving Day; Christmas Eve; and Christmas Day.

3. **TERM.** The term of this Agreement ("Term") shall commence on July 1, 2020, and shall end on June 30, 2025.

At the end of the current contract term, the city and SSAB will negotiate a rate for a term of a new contract.

4. **TIPPING FEE.** SSAB shall pay a fee to the City of \$40.00 per ton for Waste delivered to the City pursuant to this Agreement, provided that SSAB will also pay the City's standard charges for any appliances, tires, or electronic goods included in the Waste. The City's current charges for appliances, tires, and electronic goods are shown on Exhibit A attached.
5. **TERMINATION.** If either party shall give the other party notice of breach in observing any material provision of or performing any material obligation under this Agreement, and the breaching party fails to remedy such breach within 30 business days after such notice, this Agreement shall terminate at the option of the non-breaching party.
6. **NOTICES.** Any notice required or permitted to be given to a party under this Agreement shall be in writing and shall be given by personal delivery or shall be sent by prepaid, certified, or registered mail, return receipt requested, or delivered by Federal Express or other recognized overnight courier service, to either party at the addresses and to the attention of the officers set forth in this Section 6, or to such other address or person as either party shall provide in writing from time to time.

Notices under this Agreement shall be given to the parties as follows:

City of Muscatine:

Muscatine Recycling Center and Transfer Station
Dave Popp - Solid Waste and Sewer System Manager
1000 S. Houser St.
Muscatine, Iowa 52761
Phone: 563-263-9689
Email: dpopp@muscatineiowa.gov

SSAB Iowa Incorporated:

Thomas Sanicola - Environmental Manager
1770 Bill Sharp Blvd.
Muscatine, Iowa 52761
Phone: 563-381-5584
Email: Thomas.sanicola@ssab.com

7. **GENERAL TERMS AND CONDITIONS.** The parties agree that their respective obligations hereunder shall be performed in compliance with the General Terms and Conditions attached hereto as Exhibit B, which are incorporated into and form a part of this Agreement.
8. **ENTIRE AGREEMENT.** This Agreement (which includes the General Terms and Conditions) constitutes the entire Agreement between the parties with respect to its subject matter and supersedes all previous proposals, both oral and written, negotiations, representations, commitments, writings, agreements, and all other communications between the parties relating to its subject matter.

The parties have executed this Agreement as of the date stated in the introductory paragraph.

CITY OF MUSCATINE

Diana Broderson, Mayor

Date: _____

Attest:

Greg Jenkins, Interim City Administrator

SSAB IOWA, INC.:

By _____
Andy Bramstedt, General Manager

Date: _____

Industrial Contract for Solid Waste Disposal

THIS AGREEMENT, made and entered into this ____ day of _____, 2020 by and between the City of Muscatine, Iowa, a municipal corporation organized and existing under the laws of the State of Iowa, hereinafter referred to as the City, and Grain Processing Corporation hereinafter referred to as GPC.

WHEREAS, the City of Muscatine owns and operates an environmentally sound recycling center and transfer station known as the Muscatine Recycling Center and Transfer Station and operates the Muscatine County Landfill for the Muscatine County Solid Waste Management Agency.

WHEREAS, GPC currently owns and operates an industrial facility located in the Muscatine County area and agrees to dispose of their waste at the Muscatine Recycling Center and Transfer Station. All waste received at the Muscatine Recycling Center and Transfer Station will be disposed of at the Muscatine County Landfill.

WHEREAS, GPC desires to have a designated solid waste hauler bring a minimum of 100 tons to the Muscatine Recycling Center and Transfer Station annually for disposal.

WHEREAS, GPC desires to dispose of solid waste at a tipping fee rate of \$42.50 per ton.

WHEREAS, the City desires to receive all acceptable waste in the service area as stated in the permits issued by the Iowa Department of Natural Resources.

WHEREAS, the City has agreed to the above contract price for solid waste delivered to the Recycling Center and Transfer Station subject to the terms and conditions set out below.

NOW THEREFORE, in consideration of the promises and mutual agreements hereinafter set forth, the parties hereto agree as follows:

Article I – Term

This contract shall commence on July 1, 2020 and continue through June 30, 2025.

Article II- Definitions

- I. Acceptable waste is waste produced by the GPC's production of goods.
- II. Industrial contract rates will be available for a Company that employs 100 or more employees and generates a minimum of 100 tons of solid waste annually for disposal. Contract rates will not be available for solid waste haulers and building contractors.
- III. The Muscatine facilities utilized for disposal are the Muscatine Recycling Center and Transfer Station, located at 1000 S. Houser St. Muscatine, Iowa and the Muscatine County Landfill, 3700 Hwy 61N, Blue Grass, Iowa.

- IV. The service area subject to this contract includes all the industrial businesses that meets the criteria of employees and waste amounts in the following areas of Muscatine County, as stated in the 28 E Agreement of the Muscatine County Solid Waste Management Agency:

Atalissa
Conesville
Fruitland
Muscatine
Muscatine County
Nichols
Stockton
West Liberty

Article III-Representations

A. GPC Representations

1. GPC has full power and authority to execute this contract and such execution constitutes a binding legal obligation of the Company that is fully enforceable in accordance with these terms and conditions.
2. GPC is an entity duly organized, validly existing, and properly qualified to do business under the laws of Iowa.
3. The execution of this Contract is not prohibited by any other agreement, indenture, or any other instrument to which GPC is a party.
4. GPC will maintain the capability of delivering a minimum 100 tons of industrial waste annually to the Muscatine Recycling Center and Transfer Station.
5. GPC agrees to contract separately for hauling of solid waste.
6. GPC will be responsible for direct payment to the City of Muscatine for tipping fees charged to their account. All invoices will be due within 30 days from the invoice date.

B. City Representations

1. The execution of this Contract is not prohibited by any agreement, indenture, or other instrument to which the City is a party.
2. The City plans to maintain the necessary capacity needed to accommodate GPC.

Article IV- Compliance with Regulatory Requirements

1. GPC shall bring industrial waste approved for acceptance at the Muscatine Recycling Center and Transfer Station. Waste considered "Special Waste" would need to have accommodations made at the Muscatine County Landfill for direct disposal.
2. No hazardous waste can be disposed of at either facility.
3. Special items such as tires, appliances, or electronic waste would be subject to additional charges if found in loads of waste.

Article V- Delivery Requirements

1. GPC will require the hauler of their choice to deliver all industrial waste generated at its facility to the Muscatine Recycling Center and Transfer Station.
2. GPC will require the hauler of its choice to use an enclosed truck or covered container to haul waste to the designated facility.
3. In the event of a natural disaster or other emergency, hours and days of operation may be adjusted and written or verbal notice of such adjustment will be provided to GPC as soon as possible.
4. Muscatine Recycling Center and Transfer Station normal business hours are Monday – Friday 7:00 A.M. – 3:30 P.M. and Saturday 8:00 A.M. – 12:00 P.M. Closed on Sunday and holidays. Muscatine County Landfill hours vary and will be set according to circumstance. The Muscatine County Landfill observes the same holidays as the Muscatine Recycling Center and Transfer Station.
5. The City observes the following for holidays:

New Year's Day	Veteran's Day
President's Day	Thanksgiving Day
Memorial Day	Friday After Thanksgiving
Fourth of July	Christmas Eve
Labor Day	Christmas Day

Article VI -Tipping Fee Rate

1. Tipping Fee Rates

The tipping fee rate established for this account is \$42.50 per ton. This rate begins on July 1, 2020 and ends on June 30, 2025.

2. Changes in Contract Tipping Fee Rates

In the event the City increases the regular disposal rate of \$60 per ton at the Transfer Station during the contract period, the City reserves the right to implement a corresponding change in the Industrial Contract rate no earlier than July 1, 2022. The maximum rate increase would be 5% July 1, 2022 (to \$44.63/ton). The City will notify GPC at least 90 days in advance of any rate change under this section.

3. Prior to the end of the contract term, the City and GPC will enter into discussions for the terms of a new contract.

Article VII - Notices

1. All written notices required pursuant to this contract shall be either hand delivered or mailed to GPC or City at the following addresses or such other addresses as provided in writing to the other party from time to time.

City of Muscatine:
Muscatine Recycling Center and Transfer Station
Dave Popp – Solid Waste and Sewer System Manager
1000 S. Houser St.
Muscatine, Iowa 52761
Phone: 563-263-9689 E-Mail: dpopp@muscatineiowa.gov

Grain Processing Corporation:
Attn: Director of Environmental Service
1600 Oregon St.
Muscatine, Iowa 52761
Phone: 563-264-4569 E-mail: mick.durham@grainprocessing.com

With a copy to:

Grain Processing Corporation
Attn: Legal Department
1600 Oregon St.
Muscatine, Iowa 52761
Phone: 563-264-4723 E-Mail: legaldept@kentww.com

Article VIII - Assignment

1. GPC shall not transfer or assign all or any part of this Contract without the prior written consent of the City. No such assignment shall be effective unless and until the assignee consents to be bound by the terms of this Contract.

Article IX - Termination of Contract

1. In the event that GPC and City mutually agree in writing to terminate this Contract, such termination shall take effect immediately upon execution of such agreement by both parties.
2. Either party may terminate this Contract due to the default of the other party after (30) days written notice to the defaulting party describing such default. Provided, however, that this Contract shall not be terminated if the defaulting party cures the default within (30) days from the date of the mailing of the notice of default.

Article X - Unforeseen Circumstances

The inability of either party to perform any obligation under this Contract due to an Unforeseen Circumstances shall not constitute a breach of any obligation during the pendency of the Unforeseen Circumstance. "Unforeseen Circumstance" means any act, event, or condition that has had, or will have, a material adverse effect on the rights or obligations of GPC or the City under this Contract, if such act, event or condition is beyond the reasonable control of the party relying thereon as justification for not performing an obligation or complying with any condition required of such party under this Contract.

Article XI - Severability

In case any one or more of the provisions contained in the Contract shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Contract, and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

[Signature page to follow.]

In WITNESS WHEREOF, the parties have caused this Contract to be executed as of the
— day of _____, 2020 notwithstanding the date of the signature of the parties.

City of Muscatine

Diana Broderson, Mayor

Date: _____

Attest:

Greg Jenkins, Interim City Administrator

Grain Processing Corporation:


Pat Homoelle, President Grain Processing Corporation

Date: _____

Attest:


John A. Kuhl, Vice President and General Counsel