



## City of Muscatine



### AGENDA ITEM SUMMARY

DATE: 11-24-20

City Council

#### STAFF

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Nancy A. Lueck, Finance Director

#### SUBJECT

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Resolution Approving the Extension of the Kraft Heinz Industrial Contract for the Muscatine Transfer Station/Landfill

#### EXECUTIVE SUMMARY

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In 2009, the City began offering Industrial contract rates for industrial waste disposed of at the Muscatine Transfer Station and Muscatine Landfill. To qualify for the industrial rates, the industry must have a minimum of 250 employees and generate a minimum of 250 tons of waste annually. The industrial waste disposal contract with Kraft Heinz was a negotiated agreement currently at the rate of \$27.50 per ton. This rate is proposed to continue at \$27.50 per ton under the new contract which will extend their agreement through June 30, 2025.

#### STAFF RECOMMENDATION

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Staff recommends approval of the extension of the Industrial Waste contract with Kraft Heinz.

#### BACKGROUND/DISCUSSION

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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 & Industry 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.

For the 2020 Industrial contract renewals, the rates for the regular Industrial contracts were decreased by \$2.50 per ton to \$42.50 per ton. There were no changes to the lowest negotiated industrial contract rates of \$27.50 per ton. The contract with Kraft Heinz is at the lowest industrial rate of \$27.50 and that rate will continue under the new contract, which will run through June 30, 2025.

#### CITY FINANCIAL IMPACT

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The regular and negotiated industrial waste contracts generate additional waste volumes and revenues for the City's Transfer Station and Landfill.

#### ATTACHMENTS

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1. Resolution Approving the Extension of the Kraft Heinz Industrial Contract for the Muscatine Transfer Station/Landfill
2. Industrial Waste Contract with Kraft Heinz for Solid Waste Disposal

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION APPROVING THE EXTENSION  
OF THE KRAFT HEINZ INDUSTRIAL CONTRACT  
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 Kraft Heinz to extend their negotiated industrial contract for an additional five years to June 30, 2025, at a rate of \$27.50 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 the Kraft Heinz Transfer Station Industrial Contract be extended through June 30, 2025

**PASSED, APPROVED, AND ADOPTED** this 3rd day of December, 2020.

\_\_\_\_\_  
Diana Broderson, Mayor

ATTEST:

\_\_\_\_\_  
Carol A. Webb, City Administrator

## **Industrial Contract for Solid Waste Disposal**

**THIS AGREEMENT**, made and entered into as of this 1st day of December, 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 Kraft Heinz Foods Company hereinafter referred to as Kraft Heinz.

**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**, Kraft Heinz 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**, Kraft Heinz desires to have a designated solid waste hauler bring a minimum of 250 tons to the Muscatine Recycling Center and Transfer Station annually for disposal.

**WHEREAS**, Kraft Heinz desires to dispose of solid waste at a tipping fee rate of \$42.50 per ton less a negotiated discount, if any, as specified in Article VI in these terms and conditions.

**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 specified 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 December 1, 2020 and continue through June 30, 2025.

### **Article II- Definitions**

- I. Acceptable waste is solid waste produced by Kraft Heinz at its Muscatine manufacturing facility.
- II. Industrial contract rates will be available for a Company that employs 250 or more employees and generates a minimum of 250 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 meet 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. Kraft Heinz Representations**

1. Kraft Heinz 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. Kraft Heinz 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 Kraft Heinz is a party.
4. As of the date of full execution of this Contract, Kraft Heinz expects to maintain the capability of delivering a minimum 250 tons of solid waste annually to the Muscatine Recycling Center and Transfer Station.
5. Kraft Heinz agrees to contract separately for hauling of solid waste.

#### **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 Kraft Heinz.

### **Article IV- Compliance with Regulatory Requirements**

1. Kraft Heinz shall bring solid waste approved for acceptance at the Muscatine Recycling Center and Transfer Station in accordance with Article II, part I.. 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. Except for any instances where the Muscatine Recycling Center and Transfer Station and/or the Muscatine County Landfill are not available to Kraft Heinz for any reason and with respect to waste sent by Kraft Heinz to the Muscatine digester, Kraft Heinz will require the hauler of their choice to deliver all solid waste generated at its facility to the Muscatine Recycling Center and Transfer Station. Notwithstanding the foregoing, if Kraft Heinz transfers production lines from other Kraft Heinz facilities (or from one of its external manufacturer's facilities) to its Muscatine plant, the City and Kraft Heinz will work together cooperatively to determine whether any solid waste generated at the Kraft Heinz Muscatine production facility by such transferred or new production lines shall be sent by Kraft Heinz to the Muscatine Recycling Center and Transfer Station and/or the Muscatine County Landfill.
2. Kraft Heinz 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 Kraft Heinz 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 less a negotiated discount of \$15.00 for a net rate of \$27.50 per ton. This rate begins on December 1, 2020 and ends on June 30, 2025. The City will bill tipping fees monthly. The City's payment terms are "Net 30".

## **2. Changes in Contract Tipping Fee Rates**

At the end of the current contract term, the City and Kraft Heinz will negotiate a rate for a term of a new contract.

## **Article VII - Notices**

1. All written notices required pursuant to this contract shall be either hand delivered or mailed to Kraft Heinz 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](mailto:dpopp@muscatineiowa.gov)

Kraft Heinz Foods Company

Brad Kinne-Plant Manager

1357 Isett Ave.

Muscatine, Iowa 52761

Phone: 412-658-3446 E-mail: [Brad.Kinne@KraftHeinz.com](mailto:Brad.Kinne@KraftHeinz.com)

## **Article VIII - Assignment**

1. Except for an assignment to an affiliate or to a purchaser of its Muscatine manufacturing facility, Kraft Heinz 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 Kraft Heinz 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 Kraft Heinz 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.

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:

\_\_\_\_\_  
Carol A. Webb, City Administrator

Kraft Heinz Foods Company:

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Guido Gavars, Group Lead, Indirects – MRO/CAPEX

Date: \_\_\_\_\_