



Division of Public Works .
1000 South Houser St.
Muscatine, IA 52761

Recycling Center and Transfer Station

Phone (563) 263-9689

Fax: (563) 263-9689

MEMORANDUM

To: Mayor and City Council Members

Cc: Gregg Mandsager, City Administrator

From: Laura Liegois, Solid Waste Manager

Date: May 28, 2011

Re: Request Approval of the Landfill Operations Agreement between Dick Doyle Excavating, Inc. and the City of Muscatine

Recycling Center
Transfer Station
Landfill Operations
Refuse Collection

Introduction:

Over the past months, the City of Muscatine has been in discussions with Dick Doyle Excavating Inc. over the current contract signed on June 25, 2007, due to loss of solid waste disposed of at the Muscatine County Landfill. Presented for approval by council is a new contract for July 1, 2011 – June 30, 2016 between the two parties.

Background:

The new contract has several changes such as the expectation of compaction from Dick Doyle Excavation is to be at the standard of the solid waste industry. The current standard for compaction of waste at a landfill is 1,200 pounds per cubic yard. Doyle's equipment must be up to standard to meet the compaction standard. Staff will have our engineer firm administer an air space analysis on a regular basis to determine compaction by Doyle.

Another significant change is how the monthly payment to Doyle is based. The past contract was a per ton of waste received payment. The new contract features a monthly payment of \$25,000.00 month. This will allow Doyle to operate the landfill with the necessary equipment, fuel, and staff. This will also allow the City to have Doyle provide services, such as normal erosion control problems, road maintenance, and other issues that arise under this contract with no additional charges.

In the event, that additional tonnage over 50,000 tons is received, all additional tons would be paid to Doyle. The payment of \$8.00 per ton would be received in addition to the regular monthly payment.

The other adjustment made in the new contract is a change in the baseline fuel surcharge. The current contract features \$2.78 as a base fee of fuel when the contract's bid was received in March 2007. The new base fee for fuel is \$3.21. The City will pay the difference to Doyle, but an invoice with receipts must be submitted to staff to process.

**"I remember Muscatine for its sunsets. I have never seen any
on either side of the ocean that equaled them" — Mark Twain**

Recommendations for Contract for Landfill Operations:

Staff's recommendation is for council to approve the updated contract with Dick Doyle Excavating Inc. for the period of July 1, 2011 – June 30, 2016. Due to situations beyond our control of loss of waste, a monthly base fee is a suitable resolution for the situation.

SETTLEMENT AGREEMENT AND RELEASE

This settlement agreement and release (the "Release") is made and entered into by and between Dick Doyle Excavating, Inc., P.O. Box 117, Illinois City, IL 61259 (hereinafter referred to as "Doyle") and the City of Muscatine, Iowa, 215 Sycamore St., Muscatine, IA 52761 (hereinafter referred to as the "City").

WHEREAS, A lawsuit captioned *Dick Doyle Excavating, Inc. v. The City of Muscatine*, Case No. EQCV019504 (hereinafter referred to as the "Litigation") is currently pending in the Iowa District Court for Muscatine County; and

WHEREAS, Doyle and the City have each independently determined to avoid the cost of continuing legal fees and expenses in the Litigation and to compromise their respective claims and positions according to the terms and conditions hereinafter set forth; and

WHEREAS, the parties desire to enter into a written agreement embodying their mutual understanding and promises;

NOW THEREFORE, for and in consideration of the releases and covenants contained herein, and further good and valuable consideration the receipt and sufficiency of which is expressly acknowledged by each of the parties hereto, it is agreed as follows:

Section 1. Release by Doyle. Doyle, in consideration for the execution of an agreement between itself and the City for Doyle to continue to provide operation services at the Muscatine County Landfill in Muscatine, County (hereinafter referred to as the "Agreement"), Doyle hereby agrees to release, acquit and forever discharge the City—and its present or past elected officials, officers, appointees, affiliates, subsidiaries, agents, representatives, employees, managers, insurers, legal representatives and assigns—from any and all claims, demands and or causes of action, recognized at law or in equity, founded upon statute, common law or administrative regulation, known or unknown, secreted or concealed, mature or not yet mature, that Doyle does or may possess against the City or which relates in any way or arises out of any fact or inference set forth within the Litigation. This includes, but is not limited to any claim that is alleged or that could be alleged by Doyle or on its behalf at the present time.

Section 2. Release by the City. The City, in consideration for the execution of this Agreement, hereby agrees to release, acquit and forever discharge Doyle—its present or past parents, predecessors, successors, affiliates, subsidiaries, directors, shareholders, partners, agents, officers, representatives, employees, members, managers, insurers, legal representatives and assigns—from any and all claims, demands and or causes of action, recognized at law or in equity, founded upon statute, common law or administrative regulation, known or unknown, secreted or concealed, mature or not yet mature, that the City does or may possess against Doyle, or which relates in any way or arises out of any fact or inference set forth within the Litigation. This includes, but is not limited to any claim that is alleged or that could be alleged by the City or on its behalf at the present time.

Section 3. Dismissal With Prejudice. In further consideration of this Agreement, Doyle expressly authorizes and directs its counsel to file with the Clerk of the Iowa District Court in Muscatine County a Dismissal With Prejudice of all claims, to be filed not more than ten (10) business days after execution of this Agreement. Each of the parties to this Release is to be responsible for their own attorney fees and costs incurred in the Litigation.

Section 4. Joint Representations and Warranties. The parties to this Release represent and warrant to each other that: (a) this Release represents a compromise settlement of disputed claims, the liability for which each party hereto has expressly denied. The execution of this Release by any party hereto shall not be deemed an admission of liability or fault on the part of any person or entity executing this Release; (b) the consideration provided in this Release is all the consideration any party hereto shall receive and there are no promises, written or oral, expressed or implied, for the receipt of any additional consideration made by any parties as to induce any party hereto to execute this Release; (c) each party to this Release has had an opportunity to review this Release with their own independent legal counsel prior to its execution and so executes this Release solely upon the reliance and advice of their own independent legal counsel and has not relied upon any conversation, writing or remark of any other party or legal counsel acting on behalf of any other party hereto; (d) this Release shall be binding on the parties, their heirs, administrators, representatives, executors, successors and assigns; (e) the parties acknowledge that they have not transferred, to any person or entity, any rights, causes of action or claims related in this Release; (f) there is no person, entity or organization which owns or can claim to own any interest in whole or in part any of the claims being released herein; and (g) each party is under no disability or contractual agreement that would limit the ability to enter into this Release and be fully bound of each of the terms contained herein.

Section 5. Construction of Release. This Release shall be construed and enforced according to the laws of the State of Iowa. Each of the parties hereto has independently had the opportunity to fully negotiate the terms hereof and modify the draftsmanship of this Release. The terms of this Release shall be construed and interpreted without any presumption, inference or rule of law requiring the construction or interpretation of any provision of this Release against the interests of the party causing this Release to be drafted.

Section 6. Counterparts. There are multiple parties to this Release. This Release may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument and in the making of proof thereof, it shall not be necessary to produce or account for more than one such counterpart.

Section 7. Integrated Release and Amendments. This is a fully integrated Release. This Release constitutes the entire Release between the parties pertaining to the subject matter of the Release and final compromise of the Litigation and all claims of the parties to this Release. This Release supersedes all negotiations, preliminary agreements and all prior and contemporaneous discussions and understandings of the parties hereto in connection with the subject matter contained within this Release. No amendment, waiver, change or modification of any of the terms, provisions or conditions of this Release shall be effective unless made in writing and signed by all of the parties. A waiver of any provision of this Release shall not be deemed a waiver of future compliance herewith and such provisions subject to a claim or waiver shall

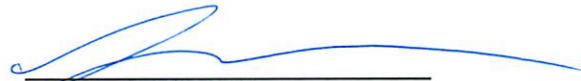
remain in full force and effect until the arbitrator issues a final determination that a waiver has occurred.

Section 8. Severability. Should any provision of this Release be deemed illegal, invalid or otherwise unenforceable, in whole or in part, by the arbitrator, the remainder of this Release shall be valid and enforceable to the fullest extent permitted by law. Additionally, any provision found to be illegal, invalid or otherwise unenforceable, may by court order be redrafted by the arbitrator to comply with existing law.

Section 9. Full Resolution of Claims. The consideration executed above fully resolved all claims held by each of the parties hereto. There shall be no new proceedings concerning any of the claims that have been released as they related to any of the parties hereto, including any new administrative proceedings for complaints.

IN WITNESS WHEREOF the party below has executed this Agreement on the 24th day of May 2011.

DICK DOYLE EXCAVATING, INC:



By: Dick Doyle
President of Dick Doyle Excavating, Inc.

IN WITNESS WHEREOF the party below has executed this Agreement on the ____ day of May 2011.

CITY OF MUSCATINE, IOWA

By: _____
Richard W. O'Brien,
Mayor

Attest: _____
Gregg Mandsager,
City Administrator

City of Muscatine Landfill Operations Contract

THIS AGREEMENT is made and entered into this _____ day of May 2011, by and between Dick Doyle Excavating, Inc., PO Box 117, Illinois City, IL 61259 ("Doyle"), and the City of Muscatine, Iowa, 215 Sycamore St., Muscatine, Iowa 52761 ("City").

WHEREAS, This Agreement is intended to supercede all previous contracts and agreements between Doyle and the City, including the agreement between the parties executed on June 25, 2007, and

WHEREAS, The City operates the Muscatine County Landfill in Muscatine County, Iowa, ("Landfill"), and desires to enter into an agreement to continue to provide operation services at the Landfill, and

WHEREAS The City and Doyle have reached agreement as to the terms and conditions of such contractual landfill operation services.

Now, THEREFORE, in consideration of the mutual promises of the parties, it is agreed as follows:

1. Doyle agrees to operate the Landfill under the direction of the Public Works Director of the City of Muscatine or his/her designee, including the following duties:

- A. Utilize adequately trained and State of Iowa certified landfill operators.
- B. Follow the Iowa Department of Natural Resources permits for the Landfill and the Iowa Administrative Code 567—Chapter 113 for landfill operations.
- C. Provide dependable and efficient equipment to operate the landfill. Items included but not limited to: Landfill Compactor, Track Loader, Scraper or Excavator and Off Road Trucks, and Dozer.
- D. Have access to back up equipment that can be on site within 2 hours of time of break down, during the Landfill's operational hours.
- E. Control litter on and off site on Hwy 61, pursuant to the applicable law, including the requirements of Iowa Code Chapter 455B, Iowa Administrative Code 567, Subtitle D of the Resource Conservation and Recovery Act, and any subsequently adopted amendments thereto. (This should be done with litter fences and litter pick up by Doyle's staff.)
- F. Provide and maintain a fuel system for Doyle's equipment used at the Landfill.
- G. Operate and maintain the working face of the Landfill which includes keeping slopes at the engineered and Iowa DNR approved designs, keeping the working face of waste at a manageable amount, daily cover with dirt or an alternative cover mix of 6 inches in depth, and compaction in accordance with industry standards (which currently includes a compaction ratio of 1,200 pounds per cubic yard).
- H. Haul and stockpile cover soil.
- I. Maintain the access road into the Landfill and the all-weather perimeter road.

- J. Erosion control and repair of erosion problem areas on closed sites of the Landfill.
- K. Control the tracking of litter and mud from the Landfill on U.S. Highway 61 for ½ mile in each direction.
- L. Maintain all buildings, utilities, and fences on site (this includes general maintenance of such facilities but not major repair or replacement).
- M. Restrict access to the Landfill by unauthorized vehicles.
- N. Have and maintain a landfill operator certificate from the State of Iowa.
- O. Work with the City's Solid Waste Driver and Solid Waste Manager to ensure the best working atmosphere possible at the Landfill.
- P. Comply with all federal, state and local rules and regulations, including those pertaining to environmental, zoning, health, safety, building, refuse, and litter in performing the services under this Agreement.

2. The City will provide the following:

- A. Engineered maps and other design plans that detail information for the Landfill.
- B. Obtain and maintain all necessary permits from the State of Iowa and Federal Government to operate the Landfill.
- C. A copy of the Muscatine County Landfill permit issued by the Iowa Department of Natural Resources and all of its amendments. (This is to be kept on site at the Landfill.)
- D. A copy of the Storm Water permit and Storm Water Pollution Plan, with yearly updates. (This is to be kept on site at the Landfill.)
- E. Copies of engineer reports and Iowa Department of Natural Resources site inspections.
- F. Provide staking once a year. If Doyle removes or runs over the staking, it will be replaced at the Doyle's expense.
- G. A copy of a monthly intake report detailing the waste that was received and hauled to the Landfill.
- H. Provide storage buildings at the Landfill for Doyle's use in providing the services detailed under this Agreement. The City is not responsible for Doyle's equipment, utilities, or upkeep for the buildings that are currently in place at the Landfill.
- I. City will provide to Doyle a computer-generated report from the Transfer Station scale program of waste tonnages that were directed to the Landfill for disposal by the fifth (5th) of each month.

3. The parties agree on the following payment terms:

- A. The City shall pay Doyle a sum of Twenty-Five Thousand Dollars (\$25,000.00) per month for the duration of this Agreement.
- B. In the event the Landfill receives more than 50,000 tons of solid waste during a given fiscal year (*i.e.*, a twelve (12) month period from July 1st through June 30th), the City shall pay Doyle an additional \$8.00 per ton for every ton of solid

waste received over the first 50,000 tons. The payments for the additional \$8.00 per ton will begin the month following any month when the landfill receives more than 50,000 annual tons during a given fiscal year. (For example, if the total annual tonnage for the landfill exceeds 50,000 tons in March, Doyle would begin to receive payments for the additional \$8.00 per ton in April for every ton over 50,000 for the remainder of that fiscal year—i.e., through June 30th.)

- C. The parties agree to periodically, but no less than annually, enter into good faith negotiations to adjust the price per ton according to the increase or decrease in the cost of No. 2 diesel fuel as reported in the "Producer Price Index- Commodities" published by the Bureau of Labor Statistics, US Dept. Of Labor, referencing the Indexes published most recently to the start date of this Agreement and that published closest to the date of any such negotiations. Effective as of July 1, 2011, the fuel surcharge shall be computed using a base fee of \$3.21 per gallon.

4. The term of this Agreement is from July 1, 2011 to June 30, 2016.

5. Doyle agrees to operate the Landfill daily Monday – Friday, except for: (a) City recognized holidays; (b) times of inclement weather; and (c) other times when so directed by the City. The parties understand that the Landfill's hours of operation may vary, due to weather conditions and Landfill operations. Normal hours of waste received at the Landfill will be from 7:00 A.M. – 4:00 P.M. Normally, no waste will be received on Saturdays, but in certain circumstances that the City's Solid Waste Manager feels it is needed, a Saturday work schedule will be required. In case of weekend work, the City will make every effort to give as much notice as possible to Doyle.

6. The City of Muscatine observes the following holidays:

New Year's Day
President's Day
Memorial Day
Independence Day
Labor Day

Veteran's Day
Thanksgiving Day
Thanksgiving Friday
Christmas Eve Day
Christmas Day

7. The parties acknowledge the following inclement weather/ wind closure policy to be observed at the Landfill:

The Landfill can close down operations in the event that the wind conditions might allow litter to escape the Landfill property or create conditions that litter could not be collected in a timely manner. The predetermined conditions are when speeds are 20 miles per hour or greater for sustained winds. Also, when gusts are exceeding 30 miles per hour the Landfill will shut down.

This policy is in place for litter and safety reasons. In the event that the Landfill operator feels the need to close down the Landfill, he/ she must contact

the Solid Waste Manager or Solid Waste Supervisor for permission to do so. It is not the Landfill operator's decision alone to close down the landfill site.

8. In the event that Doyle needs road rock or other materials that are not otherwise the responsibility of Doyle under the terms of this Agreement, Doyle must contact the Solid Waste Manager for purchase approval. A purchase order with the City must be issued before the item is ordered. The City will purchase the road rock that is needed for road maintenance.

9. Performance Expectations.

- A. In the event that an employee of Doyle does not perform his/ her work duties in conformance with this Agreement, the City will notify Doyle and provide Doyle with a reasonable opportunity to correct such non-conformance. In the event such corrective action is not successful, City may direct that the employee of Doyle involved in such situation no longer be permitted to provide services at the Landfill.
- B. In the event that Doyle does not comply with requirements set forth in the Agreement and a penalty from a regulatory agency is issued to either Doyle or the City, due to fault of Doyle, all such fines occurred by either party will be paid for by Doyle.
- C. In the event that Doyle does not meet the performance standards set forth in this Agreement, the City will notify Doyle and provide Doyle with a reasonable opportunity to correct such deficiencies. In the event such deficiencies are not corrected, the City has the right to discontinue services with Doyle. In such a case, the City will give written notice of thirty (30) days to Doyle of the termination of this Agreement. In case of an early termination due to a breach of the performance obligations under this Agreement, Doyle shall be liable to the City for any cost incurred by the default, including but not limited to securing alternative operations contracting, reasonable attorneys fees and cost which might be occurred by reason thereof.
- D. Doyle shall not be liable for its failure to perform hereunder due to contingencies beyond its reasonable control, including but not limited to weather, strikes, riots, fires, and acts of God.
- E. Doyle agrees to indemnify and hold harmless the City, its employees, agents and City Council from all liability arising from the services performed by Doyle and its employees, or agents, including court costs, attorneys fees, costs of defense, settlement and any judgment rendered.
- F. Doyle and the City agree to respond to requests for communication within forty-eight (48) hours of notice. Doyle and the Solid Waste Manager shall make sure each other has up to date contact information such as cell

phone numbers, email addresses, *etc.* to allow the parties to contact each other twenty-four (24) hours a day seven (7) days a week in the event of an emergency. Doyle and the City agree to hold a face-to-face meeting between Doyle and the Solid Waste Manager or Solid Waste Supervisor at least once per quarter. In addition, The City will meet with Doyle regarding any proposed tipping fee rate change to provide him with at least sixty (60) days notice and opportunity to comment prior to any such proposal taking effect.

10. General Provisions.

- A. This Agreement sets forth the entire agreement of the parties relating to the subject matter hereof and supersedes all prior agreements and understandings between the parties relating to the subject matter hereof. It binds and benefits the parties and their successors in interest, heirs, beneficiaries, legal representatives, and permitted assigns.
- B. Time is of the essence of each provision in this Agreement.
- C. This Agreement is governed by and construed in accordance with Iowa law.
- D. The unenforceability, invalidity, or illegality of any provision does not affect or impair any other provision or render it unenforceable, invalid, or illegal.
- E. No provisions of this Agreement is intended, nor will be interpreted, to provide or to create any third party beneficiary rights or any other rights of any kind in any client, customer, affiliate, stockholder, employee, partner of any party hereto or any other person or entity unless specifically provided otherwise herein, and, except as so provided, all provisions hereof will be personal solely between the parties to this Agreement.
- F. Unless specifically provided otherwise, any notice, request, or other communication that a party desires or is required to give to another party (or any other person) in connection with this Agreement (the "Notice") shall be in writing and may be delivered by hand, by overnight courier, or by facsimile, or served in the manner provided for an original notice, or mailed by United States registered or certified mail, return receipt requested, postage prepaid, and addressed to the party or person at the address provided in this Agreement or otherwise designated by written notice, with copies forwarded to such persons as such party or person may have directed in writing. The Notice shall be deemed given or delivered, as the case may be, on the date of receipt if delivered by hand or by overnight courier or served as an original notice; on the date of sending if sent by facsimile; or on the second calendar day after the Notice is deposited in the United States mail.
- G. Whenever a party's consent or approval is required, that party will not unreasonably withhold such consent or approval.

- H. No amendment or modification of this Agreement is effective unless made in writing and signed by each party.
- I. This Agreement may be signed in several counterparts, each of which will be an original and all of which will constitute one agreement.
- J. City represents that it has not contracted with any other party concerning the services described hereunder and that Doyle has the exclusive rights to perform the services detailed in this Agreement.

Signed as of the date stated in the introductory paragraph.

In WITNESS thereof the parties have executed this Agreement in duplicate on the date first written.

Dick Doyle Excavating, Inc.

By: 
Richard A. Doyle, President

City of Muscatine, Iowa

By: _____
Richard W. O'Brien, Mayor

Attest:

Gregg Mandsager, City Administrator