

SERVICE AGREEMENT

This agreement ("Agreement"), effective December 1, 2017, between the City of Duluth, a Minnesota municipal corporation ("City") and Waste Management ("Contractor"), with offices located at 3101 West Superior Street, Duluth, MN 55806.

WHEREAS, City desires to enter into an agreement with a Contractor to provide trash and recycling collection, transportation and disposal services;

WHEREAS, City issued an Advertisement for Bids (the "IFB") for trash and recycling collection, transportation and disposal services for various City departments/divisions locations (the "Services");

WHEREAS, Contractor is in the business of providing trash and recycling collection, transportation and disposal services to its customers;

WHEREAS, Contractor submitted a bid in response to the IFB (the "Bid") and has represented itself as fully capable of providing trash and recycling collection, transportation and disposal services to its customers and that it is qualified and willing to perform the services set forth in the IFB;

WHEREAS, the City has selected Contractor as the lowest responsible bidder and wishes to engage Contractor to provide the Services;

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the parties hereto agree as follows:

City and Contractor hereby agree to the following terms and conditions:

1. Services. The following are considered the minimum essential service standards.
 - a. Contractor shall furnish all labor and equipment needed to collect, transport and properly dispose of trash and recyclables from all identified city locations.
 - b. Contractor shall provide totes/dumpsters of the requested size for use at each location.
 - c. Contractor shall collect and dispose of all trash and recycling at each location at the frequency shown on the attached schedule.
 - d. The city reserves the right to request changes to locations, container sizes, and frequency of collection. At city's request, contractor shall start and/or stop service and shall provide and/or remove containers at no additional cost to the city. This includes changing frequency to "on call".
 - e. No fees shall be permitted for overages. If overfilled containers become an issue at a location, Contractor shall contact the City to discuss addressing the issue with additional or larger containers, increased collection frequency, etc.
 - f. Dumpsters shall be maintained in a clean and sanitary condition.
 - g. Contractor shall provide a single point of contact for customer service and billing issues.
 - h. Invoices shall identify Department/Division, location site, number of pickups during billing period and date of each pickup, container size, whether trash or recyclables, and cost.
 - i. All charges for the disposal of bulky or hazardous items shall be itemized separately on each invoice. Charges for disposal of such items will be at the rates set forth in the bid.

- j. Contractor shall work cooperatively with City of Duluth to continuously improve the waste/recycle services by offering advice on right-sizing containers, collection frequency, addressing illegal dumping of trash, and other issues.

2. Rates. The Rates established by this Agreement are attached as Exhibit A, and shall be the full, entire, and complete compensation due to Contractor for furnishing all labor, materials, equipment, supplies, and other things necessary to perform all the services required by this Agreement in the manner and at the times prescribed.

Contractor shall submit invoices monthly. Contractor shall be paid for the Services within thirty (30) days of the City's receipt of an invoice. Payments to be made out of various appropriate funds, departments and agencies, object 5384, Refuse Disposal.

Notwithstanding the foregoing, Contractor acknowledges that financial obligations of the City under this Agreement are subject to appropriation, budgeting and availability of funds to discharge such obligations. Nothing in this Agreement shall be deemed to pledge the City's credit or faith, directly or indirectly, to the Contractor.

3. Term; Termination. The term of this Agreement shall commence on December 1, 2017 and shall continue, unless earlier terminated as provided for herein, for a period of two (2) years (the "Initial Term"). The agreement will renew for two (2) additional four (4) year terms (each a "Renewal Term") unless either Contractor or City provides the other party with written notice of termination of this Agreement at least sixty (60) days prior to the end of the Term or any Renewal Term.

Either party may terminate this Agreement at any time prior to the end of the Term or any Renewal Term due to the other party's material breach of any of its obligations hereunder, which breach has not been cured to the non-breaching party's reasonable satisfaction within a reasonable time, not to exceed ten (10) business days, after receipt of written notice specifying such breach.

4. Price Adjustments. Rates may be adjusted annually effective January 1st by an amount not to exceed the percentage increase in the Consumer Price Index (CPI) from the annual average for the year two years prior to the effective date and the annual average for the year immediately preceding the effective date. The CPI used for this calculation will be CPI-All Urban Consumers (Current Series), Titled "Garbage and trash collection in U.S. city average, all urban consumers, not seasonally adjusted" Series ID CUUR0000SEHG02, with a base year of December 1983, as reported on the Bureau of Labor Statistics website at <https://data.bls.gov/>.

Increases will be calculated in the same manner as the following example:
(Assuming the effective date of increase to be January 1, 2017)

CPI 12-month average for Series CUUR0000SEHG02 for 2015 = 432.030
CPI 12-month average for Series CUUR0000SEHG02 for 2016 = 439.427
 $439.427 - 432.030 = 7.397$
 $7.397/432.030 = .017$ or 1.7%

In no instance will the adjusted rate increase annually by more than 3%, or decrease.

5. Representations and Warranties. Contractor represents and warrants that it shall perform its respective duties in a professional and diligent manner in the best interests of City and in compliance with all applicable laws; and that all personnel to be provided by it hereunder have sufficient training

and experience to perform the duties set forth herein and are in good standing with all applicable licensing requirements.

6. Insurance. Contractor shall provide and maintain in full force and effect during the life of this Agreement the following minimum amounts of insurance:

- (1) Workers compensation insurance in accordance with applicable law.
- (2) Public Liability and Automobile Liability Insurance with limits not less than \$1,500,000 Single Limit and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance; and shall provide for the following: Liability for Premises, Operations, Completed Operations, Independent Contractors, and Contractual Liability.
- (3) City of Duluth shall be named as an Additional Insured under the Public Liability and Automobile Liability and Contractor will provide Certificate of Insurance evidencing such coverage with 30-days' notice of cancellation, non-renewal or material change provisions included. The City of Duluth does not represent or guarantee that these types or limits of coverage are adequate to protect the Contractor's interests and liabilities.
- (4) The use of an Accord form as a certificate of insurance shall be accompanied by two forms:
 - (i) ISO Additional Insured Endorsement (CG-2010 pre-2004) and
 - (ii) Notice of Cancellation Endorsement (IL 7002) or equivalent, as approved by the Duluth City Attorney's Office.

B. Such insurance shall protect Contractor, its employees, agents and representatives from claims and damages including but not limited to personal injury and death and any act or failure to act by Contractor, its employees, agents and representatives in the negligent performance of work covered by this Agreement.

C. Certificates showing that Contractor is carrying the above described insurance in the specified amounts shall be furnished to the City prior to the execution of this Agreement and a certificate showing continued maintenance of such insurance shall be on file with the City during the term of this Agreement.

7. Indemnification. To the extent allowed by law, Contractor shall defend, indemnify and hold City and its employees, officers, and agents harmless from and against any and all cost or expenses, claims or liabilities, including but not limited to, reasonable attorneys' fees and expenses in connection with any claims resulting from the Contractor's a) breach of this agreement or b) its negligence or misconduct or that of its agents or contractors in performing the Services hereunder or c) any claims arising in connection with the Contractor's employees or contractors, or d) the use of any materials supplied by the Contractor to the City unless such material was modified by City and such modification is the cause of such claim. This Section shall survive the termination of this Agreement for any reason.

8. Data, Records and Inspection.

- a. The City agrees that it will make available all pertinent information, data and records under its control for Contractor to use in the performance of this Agreement, or to assist Contractor wherever possible to obtain such records, data and information.
- b. All customer addresses and other data or customer information provided to Contractor by the City pursuant to this Agreement will be confidential and will not be released by Contractor without prior authorization from the City.

- c. Records shall be maintained by Contractor in accordance with requirements prescribed by the City and with respect to all matters covered by this Agreement. Such records shall be maintained for a period of six (6) years after receipt of final payment under this Agreement.
- d. Contractor will ensure that all costs shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.
- e. Contractor shall be responsible for furnishing to the City records, data and information as the City may require pertaining to matters covered by this Agreement.
- f. Contractor shall ensure that at any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination, all of its records with respect to all matters covered by this Agreement. Contractor will also permit the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement. Costs incurred by the City in performance of the audit shall be borne by the City. Third party audits requested by the City shall be at the City's expense.

9. Independent Contractors. The parties agree that they are independent contractors, and no agency, partnership, employment or joint venture arrangement shall be deemed to exist by virtue of this Agreement, performance hereunder or otherwise. No employee or independent contractor of Contractor shall be deemed to have any employment or independent contractor relationship with City by virtue of this Agreement or performance hereunder, and such individuals shall have no claim against City for any employee benefits offered to employees of City.

10. Assignment. Contractor may not assign this agreement. City may assign this Agreement without the prior written consent of Contractor.

11. Amendment; Entire Agreement. This Agreement embodies the entire understanding of the parties and there are no other agreements or understandings, written or oral, in effect between parties relating to the subject matter hereof. This Agreement may be amended or modified only by an instrument signed by the parties.

12. Applicable Law. This Agreement, together with all of its paragraphs, terms and provisions is made in the state of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

13. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, but all of which together shall constitute but one and the same instrument. Signatures to this Agreement transmitted by facsimile, by electronic mail in "portable document format" (".pdf"), or by any other electronic means which preserves the original graphic and pictorial appearance of the Agreement, shall have the same effect as physical delivery of the paper document bearing the original signature.

14. Captions. The captions contained in this Agreement are solely for convenience of reference and are not part of the Agreement and shall not be used in construing this Agreement or in any way affect the meaning or interpretation of this Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first set forth above.

CITY OF DULUTH-

WASTE MANAGEMENT

By: _____
Mayor

By _____

Attest:

Its _____

Date: _____

By: _____
City Clerk

Date: _____

Countersigned:

City Auditor

Approved as to form:

City Attorney

Monthly Rate

The monthly rate must include all labor, materials, equipment, supplies, fees, surcharges, taxes and any other costs necessary to perform the services required by this Agreement in the manner and at the times prescribed.

TRASH CONTAINERS	1 X Week	2 X Week	3 X Week	4 X Week	5 X Week	Every Other Week	1 X Month	On Call / Per Pickup
2 Yard Waste	79.10	115.21	237.27	316.35	395.46	39.64	24.95	24.95
3 Yard Waste	90.14	179.83	270.63	360.57	451.07	45.18	37.42	37.42
4 Yard Waste	112.59	225.17	337.78	450.37	562.97	56.42	49.89	49.89
6 Yard Waste	163.45	314.73	469.17	636.97	796.23	83.73	64.72	64.72
8 Yard Waste	200.91	401.27	602.72	802.54	1003.18	100.55	86.29	86.29
10 Yard Waste	250.80	501.58	752.39	1003.18	1253.98	125.70	87.62	87.62
64 Gallon Toter	29.90	59.81	89.71	119.61	149.53	14.98	6.90	6.90
96 Gallon Toter	37.76	75.51	113.26	151.02	188.78	18.93	8.72	8.72
RECYCLING CONTAINERS	1 X Week	2 X Week	3 X Week	4 X Week	5 X Week	Every Other Week	1 X Month	On Call / Per Pickup
64 Gallon Toter	24.30	48.60	72.90	97.20	121.50	12.20	5.62	5.62
96 Gallon Toter	31.47	62.82	94.25	125.67	157.08	15.74	7.26	7.26
2 Yard Recycle	31.84	63.70	95.54	127.38	159.24	15.96	11.54	11.54
3 Yard Recycle	33.27	66.70	100.04	133.38	166.72	16.71	14.42	14.42
4 Yard Recycle	47.34	94.69	142.03	189.36	236.71	23.72	20.25	20.25
6 Yard Recycle	67.42	135.00	202.52	270.03	337.54	33.83	23.62	23.62
8 Yard Recycle	94.49	189.36	284.05	378.74	473.41	47.45	27.00	27.00
BULKY ITEMS	Please provide an itemized price list for any items, including stoves, refrigerators, water heaters, washing machines and similar "white goods," bicycles, lawn mowers, lawn chairs, furniture and other waste material other than construction debris, or hazardous waste with weights or volumes greater than those allowed for bags or carts.							

Acknowledgement of Addenda

Signature: Jeanine Peterson Date: 10-20-17 Name: Jeanine Peterson
 Phone: 218-349-9505 E-mail Address: jpeters4@wm.com Title: Acct Mgr
 Company Name: Waste Management Address: 3101 W. Superior St; Duluth MN 55804

35 item for bulk items except appliances / white goods
 call Bulkum Appliance for appliances / white goods