

City of Fayetteville Staff Review Form

2018-0510

Legistar File ID

10/2/2018

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Brian Pugh

9/13/2018

RECYCLING/TRASH COLLECTION (750)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

WINDSTAR INVESTMENTS, LLC d/b/a ROLL OFF DUMPSTERS HAULING AND DISPOSAL SERVICES, WASTE HAULING AGREEMENT:

A RESOLUTION TO APPROVE AN AGREEMENT WITH WINDSTAR INVESTMENTS, LLC d/b/a ROLL OFF DUMPSTERS FOR THE HAULING OF SOLID WASTE AND RECYCLABLE MATERIAL IN THE CITY OF FAYETTEVILLE

Budget Impact:

Account Number		Fund	
Project Number		Project Title	
Budgeted Item?	NA	Current Budget	\$ -
		Funds Obligated	\$ -
		Current Balance	\$ -
Does item have a cost?	No	Item Cost	
Budget Adjustment Attached?	No	Budget Adjustment	
		Remaining Budget	\$ -

V20180321

Purchase Order Number: _____

Previous Ordinance or Resolution # _____

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments:



MEETING OF OCTOBER 2, 2018

TO: Mayor and City Council

THRU: Don Marr, Chief of Staff
Peter Nierengarten, Sustainability and Resilience Director

FROM: Jeff Coles, Director of Recycling and Trash Collection

DATE: September 13, 2018

SUBJECT: **An agreement between the City of Fayetteville, Arkansas and Windstar Investments LLC d/b/a Roll Off Dumpsters, to haul and dispose of solid waste and recyclable material in the City of Fayetteville.**

RECOMMENDATION:

Staff recommends approving an agreement between the City of Fayetteville, Arkansas and Windstar Investments LLC d/b/a Roll Off Dumpsters, to haul and dispose of solid waste and recyclable material in the City of Fayetteville.

BACKGROUND:

Roll Off Dumpsters has submitted a request to haul and dispose of solid waste and recyclable material within the city limits of Fayetteville. The contract will permit Roll Off Dumpsters to haul and dispose of solid waste and recyclable material contained in 20, 30, and 40 cubic yard containers. The agreement requires Roll Off Dumpsters to pay a monthly fee to the City of Fayetteville of (10%) of the gross revenue received for providing solid waste hauling services and (5%) of the gross revenue received for providing the hauling of recyclables.

DISCUSSION:

The term of the agreement will be two (2) years with automatic renewals for two (2) additional two (2) year terms. Roll Off Dumpsters requests permission to operate within the City of Fayetteville. Staff proposes approval for Roll Off Dumpsters to haul and dispose of solid waste and recyclables within the City of Fayetteville, per the terms of the attached agreement.

Attached is a list of the other approved (and applicant) haulers in Fayetteville and the materials they are approved to haul. This list has grown significantly within the past year and at some point in the future it may be necessary to limit the number of franchise hauler for each type of service in the City.

BUDGET/STAFF IMPACT:

none

Attachments: Windstar Investments Franchise Agreement
Franchise agreement spreadsheet

AGREEMENT TO HAUL AND DISPOSE OF SOLID WASTE IN THE CITY OF FAYETTEVILLE

This Agreement (the "Agreement"), is entered into on this ____ day of _____ 2018, between the **City of Fayetteville, Arkansas**, a municipal corporation (the "City"), and **Windstar Investments, LLC d/b/a Roll Off Dumpsters** (the "Hauler"), and shall be in full force and effect on the date first written above, City and Hauler agree as follows:

1. The term of this Agreement shall be for two (2) years, with automatic renewals for two (2) additional two (2) year terms, unless otherwise terminated pursuant to the terms hereof. Notice of non-renewal by either City or Hauler shall be given at least thirty days prior to the end of the current term.
2. Hauler agrees that from and after the original date of this Agreement, all customer service Agreements for facilities within the corporate limits of the City, excluding residential areas, entered into before or after the effective date of this Agreement, or renewed shall have terms of no more than one (1) year and any subsequent extensions shall be for terms of no more than one (1) year. No customer service Agreement shall extend the terms of this Agreement.
3. Hauler agrees and understands that it may only collect and haul Solid Waste using the type equipment commonly referred to as open-top roll-off style containers with capacities of twenty (20) cubic yards or greater, or roll-off style compactor containers with capacities of twenty (20) cubic yards or greater, containing waste generated from industrial, large commercial or construction/demolition activities, or which is classified as Special Waste, Hazardous Waste, grease or any other type Solid Waste which requires special handling or disposal. Hauler shall not collect any Class 1 or Class 4 material in other containers. No unseparated recyclables collected in any type container shall be hauled from any customer within the corporate limits of the City of Fayetteville. The collection of scrap metal, cardboard and other source-separated recyclables are not controlled or affected by this contract.
4. In consideration of the right to provide the hauling of solid waste and/or recyclables described in Item #3 above, Hauler agrees and understands that it shall be required to pay a monthly fee of: ten (10%) percent (the "Solid Waste Fee") of the gross revenue received for providing solid waste hauling services and five (5%) percent (the "Recycling Fee") of the gross revenue received for providing the hauling of recyclables.
5. Hauler agrees and understands that it shall deliver all Class 4 waste to a properly licensed landfill facility. Hauler shall pay all transfer station fees to the transfer station operator and all landfill fees to the landfill operator, as they may be established and amended, from time to time.
6. Hauler shall pay all fees due hereunder, along with submitting "Attachment A: Solid Waste Documentation", or page 1 of Attachment A in conjunction with an agreed upon vendor generated report, on or before the 15th of each calendar month for the immediately preceding calendar month. Payments of fees received after the due date shall be assessed a 10% penalty per month. If Hauler fails to pay the fees within forty-five (45) days of the due date, the City may terminate this Agreement upon delivery of one (1) written notice to the Hauler. The supporting information shall be sufficient to demonstrate the accuracy of the fee calculation, and shall include the following information: (i) Hauler's worksheet calculating the fees remitted; (ii) a list of payments received from customers within the City; (iii) such list shall clearly indicate

whether each payment was from a permanent or temporary customer, and (iv) the fee shall be based upon all activity from each customer account within the City, and shall include the normal billing charges for all free or discounted services (including those for non-profit organizations) including but not limited to delivery, pull charges, disposal charges, transportation charges, final pull charges, and return charges. With payment remittance, the City will review and obtain certain trade secret information, including rates, frequency of service, customer lists, and other customer information ("Confidential Information"). The City asserts this information is exempt from disclosure under the Arkansas Freedom of Information Act as the information meets the exemption for records that "if disclosed would give advantage to competitors." This information will only be reviewed by City financial staff, and will not be made available to City solid waste staff.

7. Hauler shall pay all fees due hereunder, along with submitting "Attachment B: Recycling Documentation", on or before the 15th of each calendar month for the immediately preceding calendar month. Payments of fees received after the due date shall be assessed a 10% penalty per month. If Hauler fails to pay the fees within forty-five (45) days of the due date, the City may terminate this Agreement upon delivery of one (1) written notice to the Hauler. The supporting information shall be sufficient to demonstrate the accuracy of the fee calculation, and shall include the following information: (i) volumes of recycling collected, in tons, by commodity, with disposition by destination market, for all source separated recycling; (ii) for any approved non-source separated program, the Hauler shall submit to the City by June 30th on annual basis, copies of contracts with processing mills; (iii) for any approved non-source separated program, the amounts, in tons, of recycling collected within Fayetteville, with disposition by destination market. With payment remittance, the City will review and obtain certain trade secret information, including rates, frequency of service, customer lists, other customer information, and contracts with recyclers and processing mills ("Confidential Information"). The City asserts this information is exempt from disclosure under the Arkansas Freedom of Information Act as the information meets the exemption for records that "if disclosed would give advantage to competitors." This information will only be reviewed by City financial staff, and will not be made available to City solid waste staff. Any Hauler found providing services for non-source separated recyclables without prior approval by the City shall be subject to a fee of \$500.00.
8. The City shall have the right to conduct an audit of Hauler's customer files and records for all customers located within the City, provided that such audit privilege shall be limited to once per calendar quarter. If such audit reveals the Hauler should have paid at least 5% more than reported, the cost of the audit shall be paid by the Hauler to the City. During such audit, the City may review and obtain certain trade secret information, including rates, frequency of service, customer lists, and other customer information ("Confidential Information"). This information shall not be divulged to any third party by the City, its employees, officers, or elected officials without the express written consent of the Hauler, or as otherwise required by law. The City asserts this information is exempt from disclosure under the Arkansas Freedom of Information Act as the information meets the exemption for records that "if disclosed would give advantage to competitors." This information will only be reviewed by City financial staff, and will not be made available to City solid waste staff.
9. The City will advise Hauler of any request for information which the City, at the City's sole discretion, determines to be non-disclosable or otherwise subject to an exemption from disclosure under the Arkansas Freedom of Information Act. If a court of competent jurisdiction

determines that said requested information is disclosable or otherwise is not exempt from disclosure under the Arkansas Freedom of Information Act, the City will comply with said finding and notify Hauler. Discovery requests made to the City during the course of any litigation, or any other subpoena or court order issued to the City for information or records related to Hauler and this Agreement, shall be promptly made known to Hauler.

10. Hauler agrees and understands that it shall submit to the City by June 30th on an annual basis: (i) a list of all commercial vehicles used to provide services in the City; (ii) proof of appropriate vehicle registration; (iii) and proof of the insurance required under Section 16.
11. Hauler agrees and understands that it shall provide by June 30th on an annual basis: (i) a list of vehicle operators collecting and hauling waste in the City of Fayetteville; (ii) proof of their valid and appropriate commercial drivers' licenses; (iii) and the provision, maintenance, and implementation of a plan to ensure that the vehicle operators maintain their commercial driver's licenses in accordance with applicable federal and state laws.
12. Hauler agrees that it shall provide by June 30th on an annual basis copies of valid and current hauling and disposal permits from the Arkansas Department of Environmental Quality, the Solid Waste District with jurisdiction, and any local permitting agency.
13. Hauler agrees that it shall comply with all federal, state and local laws applicable to the safety, environmental and transportation matters related to providing solid waste collection services under this Agreement. Hauler agrees that all open-top roll-off style containers will be properly covered during transit on streets and highways within Fayetteville.
14. The City reserves the right to inspect all vehicles and containers to ensure that the vehicles are safe and well-maintained and that all containers are well-maintained and water tight, if necessary.
15. If Hauler utilizes the City's transfer station, Hauler agrees and understands that it shall be required to establish an individual credit or service relationship with the City of Fayetteville transfer station operator. Hauler agrees that it shall comply with all practices, policies and procedures as established by the transfer station operator from time to time. Any tipping fee deposits required by the transfer station or landfill operators shall be refunded, less any unpaid tipping fees, when the Hauler ceases hauling activities governed by this Agreement.
16. This Agreement has been entered into freely and voluntarily by Hauler which agrees to abide by all of the terms and conditions as a matter of contractual obligation pursuant to applicable City ordinances. This is a contractual Agreement and is not intended to be part of or relate in any way to any license or ordinance created pursuant to A.C.A. §26-77-102.
17. Neither this Agreement, nor any rights or obligations hereunder may be assigned or transferred to any third part or affiliate.
18. For the purpose of this contract, the Point of Contact for the City of Fayetteville shall be the City's Sustainability & Resilience Director. The Point of Contact for the Hauler shall be Gene Housley. Communications pertaining to day-to-day aspects of this contract shall be through these individuals. Either party may change its designated Point of Contact upon ten (10) days prior written notice to the other party.

19. Hauler agrees to protect, indemnify, defend and save harmless the City, its officials, officers, employees, agents, subcontractors, representatives and assigns from any loss, claim, liability, penalty, fine, forfeiture, demand cause of action, suit and costs and expenses incidental thereto (including costs of defense, settlement and reasonable attorneys' fees), to the extent caused by (i) Hauler's breach of any term, condition, covenant or warranty contained in this Agreement, or (ii) Hauler's negligent act or omission or willful misconduct related to the delivery of waste to the City transfer station or a properly licensed landfill facility.

20. Insurance: Hauler shall maintain the following insurance coverage during the term of this Agreement:

- a) Hauler shall provide and maintain, during the term of this Agreement, comprehensive general liability insurance, to protect against all claims arising out of the performance of its services hereunder that result in bodily injury, death or property damage. The policy or policies shall contain a clause that the insurer will not cancel or decrease the insurance coverage without first giving the City sixty (60) days notice in writing.
- b) Upon written request, Hauler shall furnish the City with evidence that the insurance required of it is in force.
- c) City will be added as an additional insured on General Liability and Auto Liability policies.
- d) The types of coverage and limits of liability of all insurance required herein shall be as follows:

COVERAGE	LIMITS OF LIABILITY
Worker's Compensation	Statutory
Employer's Liability	\$500,000
Bodily Injury Liability except Automobile	\$1,000,000 each occurrence
Property Damage Liability Except Automobile	\$1,000,000 each aggregate
Automobile Bodily Injury	\$1,000,000 each person
Comprehensive General Liability	\$1,000,000 each occurrence
Automobile Property Damage Liability	\$1,000,000 each occurrence
Excess Umbrella Liability	\$1,000,000 each occurrence

21. Termination:

- a) Except as otherwise provided herein, if Hauler breaches this Agreement or defaults in the performance of any of the requirement or conditions contained herein, and such breach continues for fifteen (15) days after the City has given the Hauler written notice of such breach or default, the City may: (i) terminate this Agreement no sooner than thirty (30) days after the date of written notice of such

breach or default; (ii) cure the breach or default at the expense of the Hauler; and/or (iii) exercise any right or remedy to which it may be entitled by law.

- b) The City may terminate this Agreement upon written notice to the Hauler if the Hauler makes an assignment for the benefit of creditors, or files a voluntary petition in bankruptcy, receivership or insolvency, or files an answer in any involuntary proceeding of that nature admitting the material allegations of the petition, or if a proceeding in bankruptcy, receivership or insolvency shall be instituted and such proceeding is not dismissed within sixty (60) days.
- c) In the event that this Agreement is terminated for any reason, any amounts payable to the City by Hauler for services rendered for any reason whatsoever shall become immediately due and payable as of the date of such termination.

22. All notices required or permitted under this contract shall be submitted in writing to the other party of this contract by electronic mail, return receipt requested, and by U.S. Mail, which notice shall be effective three (3) days after deposit therein addressed to the following:

City of Fayetteville
Sustainability & Resilience Director
113 West Mountain Street
Fayetteville, AR 72701

Windstar Investments, LLC
d/b/a Roll Off Dumpsters
Attn: Gene Housley
47 W. Buckingham Drive
Rogers, AR 72758

23. Hauler agrees and understands that this Agreement and documents submitted to the City pursuant hereto are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville requesting such non-exempt documents, such non-exempt documents shall be provided in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (Ark. Code Ann. § 25-19-101 et seq.). Only legally authorized photocopying costs may be assessed for this compliance.
24. This Agreement shall be interpreted according to and enforced under the laws of the State of Arkansas. Capitalized terms herein shall have the same meaning as set forth in ADEQ Reg. No. 22.
25. A waiver by either party of any of the terms or conditions herein shall be limited to that particular instance, and shall not be construed as a general waiver of either party's right to seek appropriate remedies for any other breaches by either party.
26. Each paragraph of the Agreement is severable from all other paragraphs. In the event any court of competent jurisdiction determines that any paragraph or subparagraph is invalid or unenforceable for any reason, all remaining paragraphs and subparagraphs shall remain in full force and effect.
27. This contract constitutes the entire understanding of the parties and no Notification or variation of the terms of this contract shall be valid unless made in writing and signed by the duly authorized agents of the City of Fayetteville and the Hauler.
28. Each of the undersigned warrants that he or she has the full right, power, and authority to execute this contract on behalf of the party indicated for the purposes herein contained.

29. To the extent a definition or a specific term is not provided herein but is nonetheless required by the context, it is the intention of the parties to incorporate herein the definitions contained in applicable law and regulation in effect as the date hereof, except to the extent subsequent law or regulation shall expressly or implicitly mandate a revised definition.
30. The obligations of the parties to this Agreement, which by their nature would continue beyond the termination, cancellation or expiration of this Agreement, shall survive the termination (for any reason), cancellation or expiration of this Agreement.

IN WITNESS WHEREOF, we have hereunto set our hands on the date first written above.

CITY OF FAYETTEVILLE

**WINDSTAR INVESTMENTS, LLC
D/B/A ROLL OFF DUMPSTERS**

By: _____
LIONELD JORDAN, Mayor

By: 
GENE HOUSLEY, Owner

ATTEST:

By: _____
SONDRA SMITH, City Clerk

Franchise Haulers

Business	DBA	City	Contact	Status	Activity
Eco Vista Waste Management	Waste Management	Tontitown Ar.	George Wheatley		Hauling and disposal of solid waste and recyclable material within the city limits of Fayetteville.
Hog Box		Fayetteville Ar.	Lori Devecery		Hauling and disposal of solid waste and recyclable material within the city limits of Fayetteville.
Republic/Allied Waste		Bella Vista Ar.	Jennifer Fagan		Hauling and disposal of solid waste and recyclable material within the city limits of Fayetteville.
Central Arkansas Recycling & Disposal	CARDS	Little Rock Ar.	Jason Fitzgerald	Approved 7/17/18	Hauling and disposal of solid waste and recyclable material within the city limits of Fayetteville.
Waste-Away	Whiteline Waste	Hiwassee Ar.	Ashley Harris	Approved 5/15/18	Hauling and disposal of solid waste and recyclable material within the city limits of Fayetteville.
Kansas E 3		Bethel Heights Ar.	Ed Mount	Approved 12/6/16	Hauling and disposal of solid waste and recyclable material within the city limits of Fayetteville.
Food Loops		Rogers Ar.	Tom Rohr / Michael Kraus	Approved 8/21/18	Organic waste hauling and composting within the city limits of Fayetteville.
Marck Recycling		Rogers Ar.	Kent Longley	Pending Council Approval	Hauling and disposal of solid waste and recyclable material within the city limits of Fayetteville.
Windstar Investments LLC	Roll Off Dumpsters	Rogers Ar.	Gene Housley	Pending Council Approval	Hauling and disposal of solid waste and recyclable material within the city limits of Fayetteville.