

**RESOLUTION NO. R-22-16**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH WASTE MANAGEMENT OF MISSOURI, INCORPORATED FOR PUBLIC FACILITY WASTE HAULING AND THE SPRING BEAUTIFICATION EVENT.**


WHEREAS, two (2) proposals were received for Public Facility Waste Hauling and the Spring Beautification Event and the proposal of Waste Management of Missouri, Incorporated has been determined by the Director of Public Works to be the lowest and best proposal.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLADSTONE, MISSOURI AS FOLLOWS:**


THAT, the City Manager of the City of Gladstone, Missouri, is hereby authorized to execute a contract with Waste Management of Missouri, Incorporated for the services set forth in Exhibit "A".

FURTHER, THAT funds for such purpose are authorized from the General Fund.

**INTRODUCED, READ, PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF GLADSTONE, MISSOURI THIS 25<sup>th</sup> DAY OF APRIL 2022.**

  
\_\_\_\_\_  
Bill Garnos, Mayor

ATTEST:

  
\_\_\_\_\_  
Kris Keller, City Clerk



## *Request for Council Action*

RES  # R-22-16

BILL  # City Clerk Only

ORD # City Clerk Only

Date: 4/20/2022

Department: Public Works

Meeting Date Requested: 4/25/2022

Public Hearing: Yes  Date: N/A

Subject: Public Facility Waste Hauling and Spring Beautification Event Contract

Background: The City of Gladstone solicited bids from six (6) companies with active business licenses for Public Facility Waste Hauling, the Spring Beautification Event, and on-call roll-off service in February. Two (2) companies; Waste Management of Missouri, Incorporated (Waste Management) and GFL Environmental, Incorporated (formerly Waste Corporate of America), submitted bids.

Initially, both companies declined to submit a bid for the Spring Beautification Event and each was contacted again to reconsider. GFL, who had provided the service the previous three (3) years, declined the opportunity. Republic Services also declined to submit a bid for just the event when approached directly by staff.

Waste Management (formerly Deffenbaugh), agreed to provide the service for a fixed fee of \$50,000 for the disposal of one-hundred (100) roll-off containers plus a tonnage charge of \$43.35 per ton. The average disposal weight of each roll-off container is approximately 3.5 tons, which would result in a total event cost of approximately \$65,000. This cost is approximately double what was spent last year. When asked, all of the haulers cited a shortage of truck drivers and increased labor and material costs as the reason for declining the opportunity and/or the increased cost.

Budget Discussion: Funds are available in the amount of \$ 80,000 from the General Fund for providing these services. Ongoing costs are estimated to be \$ 115,000 annually.

Public/Board/Staff Input: City staff presented the issue to the Environmental Management Advisory Committee to begin evaluating the event in its current format and to develop recommendations for the City Council. The City's current contract for public facility waste hauling expires at the end of July. Furthermore, Waste Management has previously participated in the Spring Beautification Event and has the necessary manpower to complete the event. City staff recommends award of the contract to Waste Management.

Provide Original Contracts, Leases, Agreements, etc. to: City Clerk and Vendor

Timothy A. Nebergall  
Department Director/Administrator

JM  
City Attorney

SW  
City Manager

RCA DUE TO CITY CLERK WEDNESDAY 12:00 PM

Exhibit "A"	
Item	
8 yard	27.45
3 yard	16.99
6 yard	23.21
6 yard - recycling	17.10
40 yard roll-off	413.93*
20 yard roll-off	195.00*
Spring Beautification (100 Roll-offs Dumpsters)	\$50,000 + \$43.35/ton

\*No additional tonnage fees

## BULK ITEM DROP OFF AGREEMENT

This Bulk Item Drop-off Agreement (the "Agreement") is entered into on April 28, 2022 (the "Effective Date"), by and between the City of Gladstone Missouri, a municipal corporation ("City"), and Waste Management ("WM"), a Kansas corporation.

### Recitals

- A. The City is sponsoring a drop off event where City Residents are provided the opportunity to dispose of oversized, bulky waste items at no charge;
- B. WM and its affiliates have extensive experience in providing solid waste and recyclable materials collection, disposal and processing; and
- C. The City has determined that it would be in the best interests of its citizens to contract with WM for this event according to the terms and conditions contained herein.

### Agreements

#### I. DEFINITIONS

- a. Bulk Items - shall mean furniture or waste material from a residential source other than Construction Debris or Hazardous Waste. Bulky Items shall include small furniture, rugs, countertop appliances or items. Bulk items would not include any regular refuse, loose or scattered materials, waste generated by a household business or any other commercial business, construction or demolition debris, concrete, brick, asphalt, roofing, cars, motorcycles, boats or parts of vehicles.
- b. Excluded Waste - shall mean, without limitation, any regulated quantity of a Hazardous Waste or Hazardous Substance as defined by federal, state or local laws or regulations; containerized wastes, the contents of which are not able to be identified; sludges; waste from a pollution control process or cleanup of a spill of a chemical substance or commercial product; white goods, tires; biohazards or regulated medical waste; friable asbestos; construction and demolition waste; yard waste, soil, sod, tree branches and stumps; paint; motor oil; excessive storm debris or debris resulting from weather events such as hurricanes or tropical storms; or any waste or material that is prohibited from being received, managed or disposed of at the disposal facility. Title to and liability for Excluded Waste shall remain with the resident that generated the Excluded Waste at all times.
- c. Residents - shall mean residents residing in a dwelling within the corporate limits of the City.

#### II. TERM

The term of this Agreement shall be for a period commencing on 4/28/22 and ending on 5/2/22

#### III. SERVICES

- a. WM shall furnish the labor, equipment, licenses, permits, and other requirements necessary to provide the following services to Residents during the City's Bulk Items Drop Off Event to be held from 8 a.m. on May 1 through 5 p.m. April 29 ("Event"). As part of the Service, WM shall:
  - i. Provide 40-yard roll-off containers on a continuously rotating basis (i.e., when a full container is hauled an empty container will be set in its place) with ten (10) containers on site at all times throughout the event. Ten (10) empty containers will be set in place by 7:00 a.m. on the first day of the drop off event.
  - ii. One WM employee overseeing the pickup and delivery of the roll-off containers.
- b. City shall provide site management and traffic control during the Event.
- c. Exclusions from the Service - Notwithstanding anything to the contrary herein, the Service shall not include household trash, recyclables, yard waste, construction or demolition waste collection or white goods. Bulk Items from commercial establishments are not covered by this Agreement.
- d. Disposal. WM shall dispose of acceptable Bulk Items at solid waste disposal facilities that are licensed and permitted to accept such solid waste
- e. Compliance with Laws. The Service shall be performed in accordance with all applicable statutes, laws, rules, regulations and ordinances
- f. Personnel and Equipment. The Service shall be performed by properly trained and licensed personnel in adequate numbers and with adequate vehicles and equipment to complete the Service in a safe and timely manner
- g. Anti-Discrimination. In performing the Service, WM shall not discriminate against any person on the basis of race, religion, sex, national origin, political affiliation, or physical and mental disability.

#### IV. FEES AND PAYMENTS

- a. Fee The fee shall be Fifty Thousand Dollars (\$50,000.00) for services described herein ("Fee") plus \$43.35 per ton disposal fee . If inclement weather should cause a cancellation of any portion of the Event, WM agrees to pro-rate the Fee and charge City only for the period of time the Event was held.
- b. Invoices and Payment. WM will submit invoice to the City and the City shall have thirty (30) days from the invoice date to remit payment in full. Payment by City shall be made by check or wire transfer or ACH debit. The maximum interest permitted by law shall be applied to balances due and unpaid after more than fifteen (15) days beyond the due date.
- c. Changes in Law. Notwithstanding anything to the contrary in this Agreement, WM may modify the rates to account for any increase in costs due to uncontrollable circumstances, including, without limitation, changes in local, state or federal laws or regulations, disposal or processing costs, third party transportation costs, imposition of taxes, fees or surcharges, municipal franchise fee increases and acts of God such as floods, fires, etc.

**V. DEFAULT AND TERMINATION**

The failure of either Party to perform a material obligation under this Agreement shall be considered a breach of this Agreement, and the breaching Party shall be in default. In the event of default, the non-defaulting Party shall give written notice of the default, and the defaulting Party shall have: (i) ten (10) days from the receipt of the notice to cure any failure to pay money under this Agreement, or (ii) thirty (30) days from the receipt of the notice to cure any other default under this Agreement. If the defaulting Party fails to cure the breach within the allotted time, the non-defaulting Party may, at its option, immediately terminate the Agreement. In the event of a default, the defaulting Party agrees to pay all damages caused by said default, to include, without limitation reasonable attorneys' fees and costs associated with enforcement of this Agreement. Under no circumstances shall the Parties be liable for any consequential, indirect, punitive or special damages for any alleged default under this Agreement.

**VI. FORCE MAJEURE**

WM's performance of the Service may be suspended and its obligations hereunder excused during the pendency of a cause or causes beyond its reasonable control, such as by way of example and not limitation: acts of war, public enemy, civil disturbance, riot or disorder; epidemic or pandemic; acts of God such as landslide, lightning, earthquake, fire, storm, the impending approach of a storm, or flood; explosion; restraining orders, interference by civil or military authorities, strike, statute, ordinance, government order or ruling; or other similar causes. In the event of an occurrence of a *force majeure* event, WM shall notify the City immediately, in writing, describing the particulars of the circumstances preventing performance of the Service and its expected duration. Notice shall be provided after the effect of such occurrence has ceased.

**VII. INDEMNIFICATION**

a. To the fullest extent permitted by law, the City agrees to indemnify, defend, and hold WM harmless from and against all claims and actions, suits, debts, damages, liabilities and costs whatsoever, including but not limited to attorneys' fees and costs of defense, based upon or arising out of the City's breach of this Agreement, and based upon or arising out of any injuries (including death) to persons, or damage to property, to the extent caused in whole or in part by the negligent acts or omissions of the City, or any of its directors, officers, employees, agents, or subcontractors, in the performance of this Agreement.

b. WM agrees to indemnify, defend, and hold the City harmless from and against all claims and actions, suits, debts, damages, liabilities and costs whatsoever, including but not limited to attorneys' fees and costs of defense, based upon or arising out of the breach of this Agreement, and based upon or arising out of any injuries (including death) to persons, or damage to property, to the extent caused in whole or in part by the negligent acts or omissions of WM, or any of its directors, officers, employees, agents, or subcontractors, in the performance of this Agreement.

c. Notwithstanding any provisions to the contrary, WM shall not be responsible for any damage to pavement or curbing that is the result of ordinary wear and tear during the performance of the Service.

d. The indemnification obligations of this section shall survive the termination or expiration of this Agreement for any reason.

**VIII. INSURANCE**

WM shall maintain at its own cost and expense the following minimum limits of occurrence-based insurance during the term of this Agreement:

	<u>Type</u>	<u>Amount</u>
A.	Worker's Compensation	Statutory
B.	Employer's Liability	\$500,000
C.	Comprehensive General Liability	\$500,000 per occurrence \$1,000,000 aggregate
D.	Automobile Liability (owned and non-owned)	
	i. Bodily Injury	\$1,000,000 per occurrence
	ii. Property Damage Liability	\$500,000 per occurrence
E.	Excess/Umbrella	\$500,000 per occurrence

The City, its elected and appointed officials and employees, shall be included as additional insured parties under the CGL, Automobile and Excess/Umbrella coverages. Prior to commencement of the Service, WM shall deliver to City a certificate of insurance evidencing the required coverages. This certificate shall provide that any change restricting or reducing coverage, or the cancellation of any policies under which certificates are issued, shall not be valid unless at least 30 days' written notice of cancellation is provided.

**IX. MISCELLANEOUS PROVISIONS**

a. Independent Contractor. WM shall perform the Service as an independent contractor. WM, its officers, employees, agents, contractors or subcontractors, are not and shall not be considered employees, agents or servants of the City for any purpose whatsoever under this Agreement or otherwise. WM at all times shall have exclusive control of the performance of the Service. Nothing in this Agreement shall be construed to give the City any right or duty to supervise or control WM, its officers, employees, agents, contractors, or subcontractors, nor to determine the manner in which WM shall perform its obligations under the Agreement.

b. Amendments. No amendment to this Agreement shall be made except upon the written consent of both Parties.

c. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the Parties hereto with respect to the subject matter and supersedes any prior and contemporaneous agreements and understandings, express or implied.

d. Waiver. A waiver by either Party of any breach of any provision hereof shall not be taken or held to be a waiver of any subsequent breach, whether similar or dissimilar, or as a waiver of any provision itself. No payment or acceptance of compensation for any period subsequent to any breach shall be deemed a waiver of any right or acceptance of defective performance.

e. Severance. In the event that any provision of this Agreement is found by a court of competent jurisdiction to be void, invalid, or unenforceable, the balance of this Agreement shall remain in effect and binding on the Parties.

f. Choice of Law. This Agreement shall be governed by the laws of the state where the services are being performed, without regard to choice of law rules.

g. Assignment. Neither Party may assign its rights and obligations under this Agreement without the prior written consent of the other Party, except that WM may assign its rights and obligations under this Agreement to any WM affiliate without the City's consent. An assignment shall not relieve the assignee of any obligations under this Agreement.

h. Notice. All notices required or permitted under this Agreement shall be in writing and shall be personally delivered, sent by certified mail, return receipt requested, or by overnight courier, with copies to counsel for the respective Parties.

IN WITNESS THEREOF, the parties have executed this Municipal Recycling and Waste Agreement as of the Effective Date indicated above.

**Waste Management**

Signature:



Printed  
Name:

Ammon Taylor

Title:

Area Manager of Public Sector

**City of Gladstone Missouri**

Signature:



Printed  
Name:

Scott Wiegmann

Title:

City Manager