

Legislation Text

File #: BILL NO. 22-61, **Version:** 1

An Ordinance approving the lease agreement between the City of Lee's Summit, Missouri, and Summit Transfer, LLC, for the Lee's Summit solid waste Processing facility.
(Note: First read by Council on March 15, 2022.)

Issue/Request:

Approval of a Lease Agreement for the Solid Waste Processing Facility ("SWPF"), which is a companion to the Operations Agreement for the SWPF.

Proposed City Council Motion:

I move for adoption of an Ordinance Approving the Lease Agreement between the City of Lee's Summit, Missouri, and Summit Transfer, LLC, for the Lee's Summit Solid Waste Processing Facility.

Background:

The City operates the Public Disposal Area that is located at the City's Resource Recovery Park. The City operates the Public Disposal Area for the purpose of receiving specifically enumerated household solid waste products for the benefit of the residents of Lee's Summit.

In November 2018, the City issued Request for Proposals No. 2019-032 which solicited proposals for operation of the Public Disposal Area for the City at the Resource Recovery Park. As a result of this RFP, the City executed Agreement No. 2019-032 with the Company on April 5, 2019 to provide for the operations of the Public Disposal Area, which allows residential customers in the Lee's Summit with solid waste services that are convenient by allowing use of areas of the Resource Recovery Park for drop-off of residential customers' solid waste, yard waste, and household hazardous waste.

As part of the Public Disposal Area, the City is authorized to operate a Solid Waste Processing Facility. In 2021, the City issued Request for Proposals No. 2021-016 (the "RFP") which sought statements of qualifications from qualified companies to design, construct, permit and operate a solid waste processing facility and associated programs. A stated goal of this RFP was to identify and select a partner to provide solid waste disposal services through a processing facility and continue associated environmental programs to serve residents and businesses by providing a convenient drop off location for municipal solid waste. In response to the RFP, KC Dumpster, LLC submitted a statement of qualifications. City staff has negotiated a Lease Agreement and an Operations Agreement for the lease and operation of the SWPF.

Impact/Analysis:

The Lease Agreement contains all of the rights, duties and obligations of the City and the Company for the Lease of the City property for the construction of improvements to the facility and the operation of the facility for the duration of the Lease term. The following is a summary of certain key provisions of the Lease.

Lessor

City of Lee's Summit

Lessee

Summit Transfer, LLC) (the "**Company**")

Property

32.42 acres of the City's Public Disposal Area in the Resource Recovery Park, generally located at 2101 SE Hamblen Rd, Lee's Summit, MO 64082 (the "**Property**").

Project

Solid Waste Processing Facility, to be constructed and operated by Company on the Property (the "**Project**") pursuant to the separate contract between the City and Company (the "**Operations Contract**"). The execution of both the Lease and Operations Contract by the Company (or its approved assigns) and the City are required in order for either or both to be effective. Company is to make substantial improvements on the Property in relation to the Project (the "**Improvements**").

Interest Conveyed

Company obtains a leasehold interest in the Property and the improvements already existing on the property. The existing structures on the Property are included in the leasehold estate.

Ownership of Improvements

City will own all land and improvement including improvements constructed by Company, during the Lease Term. At the end of the Lease Term, ownership of the Improvements shall remain with the City, subject to the Improvements paragraph herein. All mortgages shall be extinguished at the end of the Lease Term.

Title to Property and Compliance with Laws

City holds legal title to Property and Improvements. Company owns all personal property used with the Project, except for City-owned personal property on the Lease Commencement Date.

Duration of Lease Term

"**Construction Period**" means the period of time starting on the Effective Date and ending on the Commencement Date, during which the Company will construct the Project Improvements in accordance with the Plans and Specifications

"**Lease Term**" means the period from the Commencement Date until the date that is twenty (20) years after the Commencement Date.

"**Extension Term**" - On a date not less than one year prior to the end of the initial 20-year Lease Term or an Extension Term, either the City or Company may propose an additional five-year extension of the Lease Term. Both City and Company must mutually agree to each such five-year extension (each an "**Extension Term**"). Either the City or Company may propose an extension and the other Party can accept or decline any requested extension in its sole discretion.

Improvements

In conjunction with this Project, Company is making substantial Improvements to the Property, including infrastructure and construction of a building (which exceeds the minimum requirements for the Project) for the Project. That in order to protect Company's significant financial expenditures in making these Improvements, Company shall have an interest in the Improvements, and the City shall be obligated to make such payments to Company upon certain conditions. (the "**Residual Payment**") under the following conditions:

(1) During the Construction Period, the Residual Payment will be an amount equal to the amount of funds actually expended or agreed to be expended by the Company on construction of the Project through such Lease termination. The amount due for the Residual Payment under this circumstance will be certified in writing by the applicable Lender (s).

(2) After the Commencement Date, the amount of the Residual Payment during the first year of the Lease Period and for

each year thereafter shall be the lesser of (1) the remaining principal amount, and any interest amount accrued through the Residual Payment date, of the outstanding loan to a Lender, or (2) the amount stated on the amortization schedule for such loan which is attached as **Exhibit D**.

Maintenance and Repairs

Company must keep Project in safe condition. In Company's discretion, Company will perform all repairs to personal property, equipment, improvements, and structures. Company must comply with applicable City Codes including property maintenance, building code and fire code. All repairs and restoration to the Property are made at Company's discretion and expense. Company must keep the Project and Property in compliance with all City Codes and other Applicable Laws at all times. In the exercise of Company's discretion to perform repairs and restoration, such discretion does not relieve the obligation to comply with all City Codes and other Applicable Laws at all times.

Base Rent

\$8,000 per month starting in the first full month after the Commencement Date. Rent shall increase by 2% annually, starting in January of the calendar year after the calendar year of the Commencement Date, and shall be allocated proportionally over the 12 monthly payments each calendar year.

Other Services Provided by Company

(a) Operation of the South Recycling Facility.

(b) Up to one thousand three hundred (1300) tons annually of free disposal of Waste for the City's Public Works Department, Water Utilities Department, and Parks and Recreation Department, with such amount applying through calendar year 2023, and thereafter increasing by 2% per calendar year for the Lease Term.

(c) Up to seven hundred (700) yards annually of free compost, pulverized organic materials and mulch provided to the City's Public Works Department, Water Utilities Department, and Parks and Recreation Department, with such amount applying through calendar year 2023, and thereafter increasing by 2% per calendar year for the Lease Term.

(d) The operation of RecycleFEST, which shall be an event that occurs at least twice per calendar year which is consistent with the City's prior operation of RecycleFEST, including acceptance of all recyclable items and materials that have historically been accepted by the City.

Household Hazardous Waste Program

(1) During calendar year 2022, the City, Company and/or KC Dumpster Company, LLC will undertake efforts to educate the residents of Lee's Summit that, starting on January 1, 2023, the City of Kansas City, Missouri ("KCMO") will no longer accept Lee's Summit residents at the KCMO HHW facility, and starting on January 1, 2023, and thereafter, Lee's Summit residents may only dispose of household hazardous waste at the Project Site. It is the intention of the Parties to create a year-long transition period during calendar year 2022 whereby residents of Lee's Summit are informed of this change forthcoming January 1, 2023, to encourage and facilitate the migration of Lee's Summit residents from the KCMO HHW facility to the Project Site.

(2) Starting January 1, 2023, KCMO will stop accepting Lee's Summit residents at the KCMO HHW facility, and the City, the Company and/or KC Dumpster Company, LLC will no longer recognize or honor any payment obligations to MARC or KCMO for use of the KCMO HHW facility by Lee's Summit resident starting on that date.

(3) Promptly after the Effective Date, the City will provide written notice to MARC and KCMO that, starting on January 1, 2023, the City, Company and/or KC Dumpster Company, LLC will no longer remit payments to MARC or KCMO for the use of the KCMO HHW facility by Lee's Summit residents on and after that date.

City Access to the Project

The City has the right to access the Property to inspect, ensure and reasonably seek compliance with the Lease. City may freely access the property without permission of the Company during normal business hours, but shall provide reasonable, advanced notice of such access to Company when accessing the property outside of normal business hours. City staff shall coordinate activities on the Property with Company. During times of declared emergencies, City shall have the right of access and use of the Property.

Timeline:

The Effective Date of the Lease will be the execution date after approval by the City Council. The Company will promptly commence the Project Improvements, and the Commencement Date of the 20-Year Lease period will begin after the improvements are completed.

David Bushek, Chief Counsel for Economic Development and Planning

Staff recommends approval of the Ordinance.