

RESOLUTION R-18-08

A RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH  
VEOLIA ES SOLID WASTE MIDWEST LLC FOR RESIDENTIAL SOLID WASTE  
COLLECTION AND DISPOSAL SERVICES

WHEREAS, the City of Wheaton, Illinois ("City"), is an Illinois Home Rule Municipality pursuant to the provisions of Article VII, Section 6, of the Illinois Constitution of 1970; and as such, the City may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the subject matter of this Resolution pertains to the government and affairs of the City and its residents; and

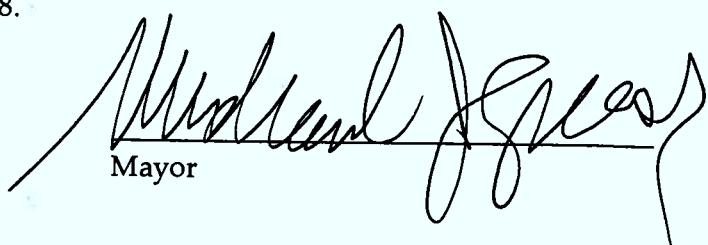
WHEREAS, the City prepared Requests for Proposal for residential solid waste collection and disposal services;

WHEREAS, the City received proposals from Waste Management, Veolia ES Solid Waste, Arc Disposal and Allied Waste; and

WHEREAS, the City has determined it to be in the best interests of the City and its residents to enter into an Agreement with Veolia ES Solid Waste Midwest, LLC, a Wisconsin corporation, to provide comprehensive residential solid waste collection and disposal services.

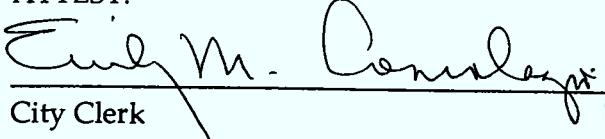
NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, that the Mayor is authorized to sign and the City Clerk is authorized to attest to an Agreement between the City of Wheaton and Veolia ES Solid Waste Midwest, LLC for Residential Solid Waste Collection and Disposal Services.

ADOPTED this 7<sup>th</sup> day of April, 2008.



Michael J. Giese  
Mayor

ATTEST:



Emily M. Consalvo  
City Clerk

### Roll Call Vote

Ayes: Councilman Prendiville  
Councilman Suess  
Councilwoman Corry  
Councilman Johnson  
Mayor Gresk

Nays: Councilman Levine  
Councilman Mouhelis

Absent: None

## Motion Carried

Adopted: April 7, 2008

# AGREEMENT BETWEEN THE CITY OF WHEATON, ILLINOIS AND VEOLIA ES SOLID WASTE MIDWEST FOR RESIDENTIAL SOLID WASTE COLLECTION AND DISPOSAL SERVICE

This Agreement is entered into by and between the City of Wheaton, an Illinois municipal corporation ("City"), 303 West Wesley Street, Wheaton, IL 60187, and Veolia ES Solid Waste Midwest, LLC ("Contractor"), a Wisconsin corporation, 1210 Lyon Street Batavia Illinois, 60510

## WITNESSETH:

**Whereas**, the City has determined that it is necessary to obtain the goods and/or services as more fully recited in the *Request for Bid Proposal* dated December, 2007 and five (5) Amendments; and

**Whereas**, the City has heretofore requested proposals for the work, materials, and services necessary to perform the services and complete all the work; and

**Whereas**, the Contractor submitted a *bid proposal* to the City for the work specified; and

**Whereas**, the Contractor submitted an Alternate Cart Program wherein each residence in the City would receive a 65 gallon recycling cart for the collection of recyclables as specified in Exhibit A attached hereto and incorporated herein; and

**Now, therefore**, for in consideration of their mutual promises, terms, covenants, agreements, and conditions recited in this Agreement, the City and the Contractor hereto do hereby agree as follows:

1. *Scope of Services*. The Contractor shall furnish all labor, materials, and equipment to provide the City of Wheaton with Residential Solid Waste Collection and Disposal Service as described in this Agreement and attached Exhibit A. The Contractor represents and warrants that it shall perform the services in a manner consistent with the level of care and skill customarily exercised by other professional contractors under similar circumstances.

2. *Compensation*. The City shall compensate the Contractor according to the terms of the Contractor's proposal which is attached hereto as Exhibit A.

3. *Term of Agreement*. This Agreement shall commence at 12:01 a.m. July 1, 2008 and shall terminate at 11:59 p.m. June 30, 2013. The City, at its option, may extend this Agreement for an additional three years if the Contractor and the City can agree on prices, conditions, and specifications.

4. *Additional Services*. The Contractor shall provide only those goods and perform only those services specified in this Agreement and attached Exhibits. In the event the Contractor,

Engineer or the City determines that additional goods and/or services are required to complete the project, such additional goods shall not be provided and/or such additional services shall not be performed unless directed in writing by the City. Terms, frequency, and prices for additional services shall be as mutually agreed upon in writing by the City and the Contractor.

*5. Hold Harmless and Indemnification.* The Contractor shall defend, hold harmless, and indemnify the City, its officers, agents, employees, and elected officials, in whole or in part from any loss, damage, demand, liability, cause of action, fine, judgment, or settlement, together with all costs and expenses related thereto (including workers' compensation claims, reasonable expert witness and attorney fees, or any action in law or equity brought by any party under Federal or State law in an effort to set aside the contract), that may be incurred as a result of bodily injury, sickness, death, or property damage or as a result of any other claim or suit of any nature whatsoever arising from or in any manner connected with directly or indirectly, the negligent acts, errors, omissions, or intentional acts or omissions, or omissions of any agent, subcontractor, or contractor hired to perform any services on behalf of the Contractor.

*6. Insurance.* The Contractor and each of its agents, subcontractors, and consultants hired to perform any services provided for in this Agreement and attached Exhibits, shall purchase and maintain during the term of this Agreement:

- Employers' Liability Insurance, with limits of not less than one million dollars (\$1,000,000) per occurrence
- Commercial General Liability Insurance Coverage, including Contractual Liability Insurance, with a limit of not less than one million dollars (\$1,000,000.00) for bodily injury and property damage per occurrence,
- Worker's Compensation Insurance with limits as required by the applicable statutes of the State of Illinois,
- Commercial Automobile Liability Insurance covering Contractor's owned, non-owned, and leased vehicles with coverage limits of not less than one million dollars (\$1,000,000.00) for bodily injury and property damage per occurrence, and
- Umbrella or Excess Liability Insurance coverage of not less than five million (\$5,000,000.00) for bodily injury, property damage, and personal injury per occurrence.
- The City shall be named as an additional insured on all insurance policies except Worker's Compensation..

Nothing herein set forth shall be construed to create any obligation on the part of the City to indemnify Contractor for any claims of negligence against Contractor or its agents or employees. Prior to commencement of any work under this Agreement, Contractor shall file with the City the required original certificates of insurance with endorsements, which shall clearly state all of the following:

- A. The policy number; name of insurance company; name and address of the agent or authorized representative; name, address, and telephone number of the insured; project name and address; policy expiration date; and specific coverage amounts; and
- B. That the City shall receive ninety (90) days written notice prior to cancellation or alterations reducing the policy limits; and

C. Contractor's insurance is primary with respects to any other valid or collectible insurance City may possess, including any self-insured retention that City may have; and

D. Any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with Contractor's insurance; and

E. All insurance carriers providing coverages under this Agreement shall be admitted and authorized to do business in the State of Illinois and shall be rated at least A:X in A.M. Best and Companies Insurance Guide or otherwise acceptable to the City. Insurance policies and certificates issued by non-admitted insurance companies are unacceptable; and

F. The Contractor shall be solely responsible for satisfying any deductible required under the insurance policies; and

Any deductibles or self-insured retention shall be stated on the certificates of insurance provided to the City; and

G. The City may require increases in Contractor's insurance coverage amounts over the course of this Agreement as it deems necessary so long as it reimburses Contractor for the actual increase in Contractor's insurance premiums attributable to the City's requested increase; and

H. Where Contractor's coverage is primary, Contractor shall control the defense to the extent of its insurance limits.

*7. Prevailing Wage:* Where applicable, the contractor and any subcontractors shall comply with all provisions of the Prevailing Wage Act, 820 ILCS 130/1 et seq., or any successor statute, and the document entitled "Special Provisions for: Wages of Employees on Public Works," which is attached hereto and incorporated as an Addendum.

*8. Compliance with Laws.* The Contractor shall comply with all applicable federal, state, and local laws, rules, and regulations, and all City ordinances, rules and regulations now in force or hereafter enacted, in the provision of the goods and/or performance of the services required under this Agreement.

*9. CERCLA (Comprehensive Environmental response, Compensation, and Liability Act):* The Contractor shall, to the maximum extent permitted by law, indemnify, defend, and hold harmless the City, its officers, employees, agents, and attorneys from and against any and all liability, including without limitations, costs of response, removal, remediation, investigation, property damage, personal injury, damage to natural resources, health assessments, health settlements, attorneys' fees, and other related transaction costs arising under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, 42 U.S.C.A. Sec. 9601, et seq., as amended, and all other applicable statutes, regulations, ordinances, and under common law for any release or threatened release of the waste material collected by the Awarded Proposer, both before and after its disposal."

*10. Termination of Contract.* If the Contractor fails to perform according to the terms of this Agreement, then the City may terminate this Agreement upon seven (7) days written notice to the Contractor. In the event of a termination, the City shall pay the Contractor for services performed as of the effective date of termination, less any sums attributable, directly or indirectly, to Contractor's breach. The written notice required under this paragraph shall be either:

- (i) served personally during regular business hours;
- (ii) served by facsimile data transmission during regular business hours;
- or
- (iii) served by certified or registered mail, return receipt requested, addressed to the address listed in this Agreement with postage prepaid and deposited in the United States mail.

Notice served personally and by facsimile data transmission shall be effective upon receipt, and notice served by United States mail shall be effective three (3) business days after mailing.

*11. Discrimination Prohibited.* The Contractor shall comply with the provisions of the Illinois Human Rights Act, as amended, 775 ILCS 5/1-101 et seq. (1992 State Bar Edition), and with all rules and regulations established by the Department of Human Rights. The Contractor agrees that it will not deny employment to any person or refuse to enter into any contract for services provided for in this Agreement to be performed on its behalf on the basis of unlawful discrimination as defined in the Illinois Human Rights Act.

*12. Status of Independent Contractor.* Both City and Contractor agree that Contractor will act as an Independent Contractor in the performance of duties under this agreement. Accordingly, the Independent Contractor shall be responsible for payment all taxes including federal, state, and local taxes arising out of the Contractor=s activities in accordance with this agreement, including by way of illustration but not limitation, federal and state income tax, social security tax, and any other taxes or license fees as may be required under the law. Contractor further acknowledges under the terms of this Agreement, that it is not an agent, employee, or servant for the City for any purpose, and that it shall not hold itself out as an agent, employee, or servant of the City under any circumstance for any reason. Contractor is not in any way authorized to make any contract, agreement, or promise on behalf of City, or to create any implied obligation on behalf of City, and Contractor specifically agrees that it shall not do so. City shall have no obligation to provide any compensation or benefits to Contractor, except those specifically identified in this Agreement. City shall not have the authority to control the method or manner by which Contractor complies with the terms of this Agreement.

*13. Assignment; Successors and Assigns.* This Agreement may not be assigned by either of the parties hereto without the written consent of all other parties. Upon approval of assignment, this Agreement and the rights, interests and obligations hereunder shall be binding

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upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

**14. Recovery of Costs.** In the event the City is required to file any action, whether legal or equitable, to enforce any provision of this Agreement, the City shall be entitled to recover all costs and expenses incurred as a result of the action or proceeding, including expert witness and attorney's fees, if so provided in any order of the Court.

**15. Notification.** All notification under this Agreement shall be made as follows:

If to the Contractor:

*Veolia ES Solid Waste Midwest*  
Attn: James M. Rooney  
*1210 Lyon Street*  
*Batavia, IL 60510*

If to the City:

City of Wheaton  
Attn: *City Clerk*  
*303 West Wesley Street Box 727*  
Wheaton, IL 60189-727

**16. Waiver.** Any failure of either the City or the Contractor to strictly enforce any term, right, or condition of this Agreement shall not be construed as a waiver of such term, right, or condition.

**17. Integration.** The provisions set forth in this Agreement represent the entire agreement between the parties and supersede all prior agreements, contracts, promises, and representations, as it is the intent of the parties to provide for a complete integration within the terms of this Agreement. This Agreement may be modified only by a further written agreement between the parties, and no modification shall be effective unless properly approved and signed by each party.

**18. Non-disclosure.** During the course of the work specified in this Agreement, Contractor may have access to proprietary and confidential information including, but not limited to, methods, processes, formulae, compositions, systems, techniques, computer programs, databases, research projects, resident name and address information, financial data, and other data. Contractor shall not use such information for any purpose other than described in this Agreement and Exhibits and shall not directly or indirectly disclose such information to any third party without the express written consent of the City.

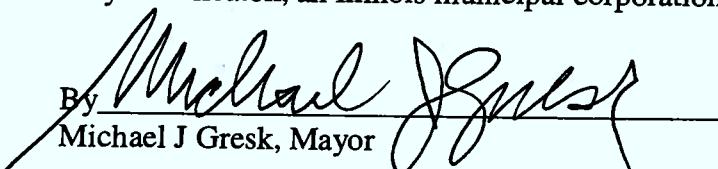
**19. Severability.** If any provision of this Contract is held to be illegal, invalid, or unenforceable, such provision shall be fully severable, and this Contract shall be construed and enforced as if such illegal, invalid, or unenforceable provision were never a part hereof; the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance; and in lieu of such illegal,

invalid, or unenforceable provision there shall be added automatically as part of this agreement, a provision as similar in its terms to such illegal, invalid, or unenforceable provision as may be possible and legal, valid and enforceable.

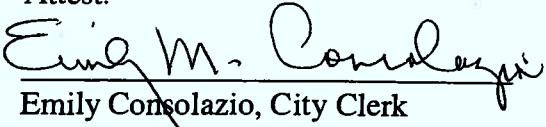
20. *Law to Govern and Venue.* This Agreement shall be governed by the laws of the State of Illinois, both as to interpretation and performance, and the venue shall be DuPage County, Illinois.

In Witness Whereof, the parties have entered into this Agreement this 7<sup>th</sup> day of April, 2008.

City of Wheaton, an Illinois municipal corporation

By   
Michael J Gresk, Mayor

Attest:

  
Emily Consolazio, City Clerk

Veolia ES Solid Waste Services Midwest, Inc.

By \_\_\_\_\_

Attest:

\_\_\_\_\_