

RESOLUTION R-2021-23

**A RESOLUTION AUTHORIZING THE EXECUTION OF AMENDMENT #3 OF AGREEMENT #C36898
BETWEEN THE CITY OF WHEATON, ILLINOIS AND LAKESHORE RECYCLING SYSTEMS, LLC FOR
SOLID WASTE COLLECTION AND DISPOSAL AND RECYCLING SERVICES**

WHEREAS, the City of Wheaton, DuPage County, Illinois ("City") and Lakeshore Recycling Systems, LLC ("Contractor") entered into an Agreement dated August 2, 2016 for Solid Waste Collection and Disposal and Recycling Services (City Agreement #C36898, hereinafter "Agreement") which provides the City with solid waste and recycling collection service for five (5) years; and

WHEREAS, the Agreement was first amended on April 16, 2018 via Amendment #1 to allow for the substitution of a performance bond as an alternative to the irrevocable letter of credit required by the Agreement; and

WHEREAS, the Parties executed Amendment #2 on June 18, 2018, to allow for the elimination of the Wednesday residential collection service day and reallocation of Wednesday collection service to other days of the week, and to maintain the Agreement's year two pricing for residential collection service provided to all residents during year three of the Agreement's term; and

WHEREAS, the Agreement terminates at 11:59 pm on September 30, 2021; and

WHEREAS, paragraph 3 of the Agreement authorizes the Parties to extend the Agreement and Section 5 of the Residential Solid Waste Collection and Disposal Service Specifications, "Contract Exhibit A," requires that any desired extension of the Agreement's term be finalized by April 30, 2021 and approved by the City's City Council by May 31, 2021; and

WHEREAS, the City and Contractor have determined that is for their mutual benefit to enter this Amendment #3 to Agreement #C36898 to extend the term of the Agreement for an additional three (3) years and amend the Agreement's provisions on pricing and various performance specifications to reflect the City's current refuse and recycling collection service needs, and to update the insurance and certifications provisions.

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 hereby directed to attest to Amendment #3 to Agreement #C36898 between the City of Wheaton and Lakeshore Recycling Systems, LLC., at the pricing set forth in the Residential Solid Waste Collection and Disposal Service Specifications which are incorporated into Amendment #3 to Agreement #C36898; and that a copy of that certain City of Wheaton Amendment #3 to Agreement #C36898 is on file with the City Clerk's office as Exhibit A to this Resolution R-2021-23 and is hereby incorporated into this Resolution as if fully set forth herein.

ADOPTED this 5th day of April 2021.

ATTEST:

Shawn Bennett-Hagan
City Clerk

Mayor

Philip Suess

Roll Call Vote:

Ayes: Councilman Rutledge
Councilman Zaruba
Councilwoman Bray-Parker
Mayor Suess

Nays: Councilman Barbier
Councilwoman Fitch
Councilwoman Robbins

Absent: None

Motion Carried

**AMENDMENT #3 OF AGREEMENT #C36898
AGREEMENT BETWEEN THE CITY OF WHEATON, ILLINOIS
AND LAKESHORE RECYCLING SYSTEMS, LLC
FOR SOLID WASTE COLLECTION AND DISPOSAL AND RECYCLING SERVICES**

This Amendment #3 to Agreement #C36898 (the "Agreement") is entered into as of this _____ day of _____ 2021 by and between the CITY OF WHEATON, an Illinois municipal corporation ("City"), 303 W. Wesley Street, Wheaton, IL 60187, and LAKESHORE RECYCLING SYSTEMS, LLC, ("Contractor"), 6132 Oakton Street, Morton Grove, IL 60053. City and Contractor are at times collectively referred to hereinafter as the "Parties" and individually as "Party."

WHEREAS, the City and Contractor entered into Agreement #C36898, executed on August 2, 2016, in which the Contractor agreed to provide Solid Waste and Recycling Collection Services for the residents of the City and which divides the City into five collection service areas with each service area receiving solid waste and recycling collection service on a different day of the week; and

WHEREAS, the Agreement was first amended on April 16, 2018 via Amendment #1 to allow for the substitution of a performance bond as an alternative to the irrevocable letter of credit required by the Agreement; and

WHEREAS, the Parties executed Amendment #2 on June 18, 2018, to allow for the elimination of the Wednesday residential collection service day and reallocation of Wednesday collection service to other days of the week, and to maintain the Agreement's year two pricing for residential collection service provided to all residents during year three of the Agreement's term; and

WHEREAS, the Agreement terminates at 11:59 pm on September 30, 2021; and

WHEREAS, paragraph 3 of the Agreement authorizes the Parties to extend the Agreement and Section 5 of the Residential Solid Waste Collection and Disposal Service Specifications, "Contract Exhibit A," requires that any desired extension of the Agreement's term be finalized by April 30, 2021 and approved by the City's City Council by May 31, 2021; and

WHEREAS, the City and Contractor have determined that is for their mutual benefit to enter this Amendment #3 to Agreement #C36898 to extend the term of the Agreement for an additional three (3) years and amend the Agreement's provisions on pricing, the map of resident collection days, locations where stickers are sold, the days and frequencies of when Contractor services City facilities, and the map of Central Business District refuse and recycling containers to be emptied by Contractor, provide for free refuse and/or recycling cart exchanges prior to October 1, 2021 and provide for further updates to the specifications to reflect current practices.

NOW, THEREFORE, in consideration of the agreements contained in this instrument and such other sufficient considerations, Agreement #C36898 between the City and Contractor which

was executed by the parties on August 2, 2016, and subsequently amended on April 16, 2018 and on June 18, 2018, is hereby further amended by mutual agreement as follows:

1. The recitals set forth above, are incorporated herein as substantive terms and conditions of Amendment #3 to Agreement #C36898 and represent the intent of the parties.
2. All provisions of Agreement #C36898, a copy of which is attached hereto and incorporated by reference herein as **Exhibit A3-1**, and Amendment #1 to Agreement #C36898, a copy of which is attached hereto and incorporated herein as **Exhibit A3-2**, and Amendment #2 to Agreement #C36898, a copy of which is attached hereto and incorporated herein as **Exhibit A3-3**, shall remain in full force and effect, except as modified herein by this Amendment #3.
3. In the event of any conflict or inconsistency between the provisions of this Amendment #3 and the Agreement or Amendment #1 or Amendment #2 to the Agreement, the provisions of this Amendment #3 shall in all respects govern and control.
4. This Amendment #3 shall become effective at 12:00 a.m. on October 1, 2021 ("Effective Date") and shall terminate in accordance with the "Term of Agreement" provisions in the Agreement, as Amended by this Amendment #3 or by subsequent Amendment(s).
5. The Parties hereby amend and restate Paragraph 3 of the Agreement in its entirety to read as follows:

"This Agreement shall commence at 12:00 a.m. on October 1, 2021 and shall terminate at 11:59 p.m. September 30, 2024. The Parties may extend this Agreement for an additional period of time if the Contractor and City can agree on prices, conditions, and specifications."
6. "Contract Exhibit A" titled "Residential Solid Waste Collection and Disposal Service Specifications" shall be replaced in its entirety with **Contract Exhibit A-1**, attached hereto and incorporated herein by reference.
7. The Parties hereby amend and restate Paragraph 15 of the Agreement in its entirety to read as follows:

"If the Contractor fails to perform according to the terms of this Agreement, then the City may terminate this Agreement upon twenty-four hours written notice to the Contractor. The Contractor shall be given forty-eight (48) hours after notice of failure to perform to cure the performance breach. If in the opinion of the City the Contractor has failed to cure the performance breach, the City may take any steps it determines are

necessary to cure the performance breach, including the use of other solid waste collection and disposal providers. The City may draw on any Performance Bond or Letter of Credit provided under this Agreement or any Amendment to the Agreement for all expenses incurred as a result of any performance breach. The City reserves the right to seek any legal or equitable remedy available to address the breach and any damages incurred by the City (or its residents) as a result thereof. 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; (iii) by e-mail or (iv) served by certified mail, return receipt requested, addressed to the address listed in this Agreement with postage prepaid and deposited in the United States mail system. 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."

8. The following shall be added to the Agreement as Paragraph 21:

21. Execution of Certifications. Contractor shall execute the legal certifications and compliance with laws documentation which is attached hereto and incorporated herein as if fully set forth as **Group Exhibit E.**

9. The following shall be added as Paragraph 22 to the Agreement:

22. Insurance: Contractor shall provide certificates and policies of insurance, all will coverages and limits acceptable to the City, and evidencing at least the minimum insurance coverages and limits as set forth by the City in the Special Provisions for Insurance which is attached hereto and incorporated as if fully set forth herein, as **Exhibit F** to this Addendum.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment #3 to be executed by their duly authorized representatives as of the date and year written above.

CITY:

City of Wheaton

By: Philip J. Sween
MAYOR

Date: 4/6/21

Attest: Chair Bennett Hagan

CONTRACTOR:

Lakeshore Recycling Systems, LLC

By: John B. Canner

Date: 4/07/21

Title: MANAGING PARTNER

Attest: Deena Pedersen