

RESOLUTION R-35-16

A RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH LAKESHORE RECYCLING SYSTEMS, LLC FOR RESIDENTIAL SOLID WASTE COLLECTION AND DISPOSAL AND RECYCLING SERVICES

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

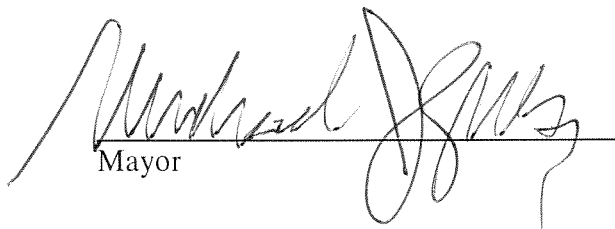
WHEREAS, the subject matter of this resolution pertains to the government and affairs of the City and its residents; and

WHEREAS, the City received proposals from Lakeshore Recycling Systems LLC, Advanced Disposal Services Solid Waste Midwest LLC, Waste Management of Illinois Inc., Republic Services and Groot Industries; 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 Lakeshore Recycling Systems, LLC, an Illinois Corporation, to provide comprehensive residential solid waste collection and disposal and recycling 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 directed to attest to an Agreement between the City of Wheaton and Lakeshore Recycling Systems, LLC for Residential Solid Waste Collection and Disposal and Recycling Services.

Adopted this 1st day of August, 2016.



Mayor

Attest:



City Clerk

Ayes:

Roll Call Vote:

Councilman Sues
Councilwoman Fitch
Councilman Rutledge
Mayor Gresk
Councilman Saline
Councilman Scalzo

Nays:

None

Absent:

Councilman Prendiville

Motion Carried Unanimously

Agreement Between the City of Wheaton, Illinois
and LAKESHORE RECYCLING SYSTEMS LLC (LRS)

RESIDENTIAL SOLID WASTE COLLECTION, DISPOSAL AND RECYCLING SERVICES

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 Lakeshore Recycling Systems, L.L.C. (LRS) ("Contractor"), 6132 Oakton Street, Morton Grove, IL 60053.

RECITALS:

Whereas, the City in furtherance of its residential waste and recycling program elected to issue a request for proposals for "Residential Waste Collection and Disposal Service" dated May of 2016 (hereinafter "Proposal"); and

Whereas, The City addressed four questions or proposal's for amendment to the Proposal prior to receiving thirteen (13) completed proposals from five (5) proposers; and

Whereas, City staff evaluated the proposals and upon direction from the City's Corporate authorities, entered into negotiations with the Contractor for a final agreement to provide the services deemed in the best interests of the City; and

Whereas, the City and Contractor agree that this Agreement, including the Exhibits referred to below, constitute the final Agreement between them for residential solid waste, disposal and recycling services said exhibits being: the final **Residential Solid Waste Collection and Disposal Service Specifications (hereinafter "RSWCDS Specs")**, **Exhibit A**, the Contractor's submittal for Program 2 **Exhibit B**, and **Exhibit C** which are attached hereto and incorporated herein as if fully set forth (collectively referred to as the "Contract Documents"); and

Whereas, all Contractor obligations set forth in these Agreement Contract Documents are referred to herein as ("the Work"); and

Whereas, any inconsistencies in the Contract Documents shall be subject the following priority of application and enforcement:

- a. RSWCDS Specs;
- b. Exhibit B;
- c. Exhibit C;
- d. This Agreement;

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

1. **Scope of Service:** The foregoing Recital, including all Exhibits, are incorporated herein as substantive terms and conditions of this Agreement, and as representing the intent of the Parties. The Contractor shall perform the Work in conformance with the Contract Requirements.
2. **Compensation:** Compensation shall be as provided in the RSWCDS Specs.
3. **Term of Agreement:** This Agreement shall commence at 12:01 am October 1, 2016 and shall terminate at 11:59 pm September 30, 2021. The parties may extend this Agreement for an additional period of time if the Contractor and the City can agree on prices, conditions, and specifications.

4. **Additional Services:** *The Contractor shall provide only the Work specified in this Agreement and attached Exhibits. In the event the Contractor or the City determines that additional goods and/or services are required to complete the Work, such additional goods shall not be provided and/or such additional services shall not be performed unless authorized in writing by the City.*
5. **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 via amendment or addendum. No course of conduct before, or during the performance of this Agreement, shall be deemed to modify, change or amend this Agreement.*
6. **Waiver:** *Any failure of either the City or the Contractor to strictly enforce any term, right, or condition of this Agreement whether implied or expressed, shall not be construed as a waiver of such term, right, or condition.*
7. **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.*
8. **Hold Harmless and Indemnification:** *The Contractor shall defend, hold harmless, and indemnify the City, its directors, officers, employees, agents, and elected officials, in whole or in part from and against any and all liabilities, injuries including death, casualties, losses, claims, demands, damages, fines, penalties, costs, and expenses including, but not limited to, worker's compensation claims, tort claims,, administrative proceedings, reasonable expert witness and attorney fees or any action in law or equity that may arise 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 the contractor, its agents, employees or subcontractors.*
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. **Freedom of Information Act:** *The Contractor shall, within twenty four hours of the City's request, provide any documents in the Contractor's possession related to the contract which the City is required to disclose to a requester under the Illinois Freedom of Information Act. This provision is a material covenant of this Agreement. Contractor agrees to not apply any costs or charge any fees to the City regarding the procurement of records required pursuant to a FOIA request. Should Contractor request that the City utilize a lawful exemption under FOIA in relation to any FOIA request thereby denying that request, Contractor agrees to pay all costs connected therewith (such as reasonable attorney's and witness fees, filing fee, and any other expenses) to defend the denial of the request. The defense shall include, but not be limited to, challenged or appealed denials of FOIA requests to either the Illinois Attorney General or a court of competent jurisdiction. Contractor agrees to defend, indemnify, and hold harmless City, and agrees to pay all costs connected therewith (such as reasonable attorney's and witness fees, filing fees and any other expenses) to defend any denial of a FOIA request by Contractor 's request to utilize a lawful exemption to City.*

- 11. Status of Independent Contractor:** *Both City and Contractor agree that Contractor will act as an Independent Contractor in the performance of the Work. Accordingly, the Independent Contractor shall be responsible for payment all taxes including federal, state, and local taxes arising out of the Contractor's Work, 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.*
- 12. Assignment; Successors and Assigns:** *Neither this Agreement, nor any part, rights or interests hereof, may be assigned to any other person, firm or corporation without the written consent of the parties. Upon approval of assignment, this Agreement and the rights, interests and obligations hereunder shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.*
- 13. Non-disclosure:** *During the course of the Work, the 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. The Contractor shall not use such information for any purpose other than described in this Agreement and Exhibits and shall not directly or indirectly disclose or disseminate such information to any third party without the express written consent of the City.*
- 14. Patents:** *The Contractor shall protect, defend, and save the City harmless against any demand for payment for the use of any patented material process, article, or device that may enter into the performance of the Work, or copywrited material that form a part of the Work covered by the contract.*
- 15. Termination of Contract:** *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 hours (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, it may undertake the cure set forth in the RSWCDS Specs. 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 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.*
- 16. Force Majeure:** *No party hereto shall be deemed to be in default or to have breached any provision of this Agreement as a result of any delay, failure in performance or interruption of services resulting directly or indirectly from acts of God, acts of civil or military disturbance, or war, which are beyond the control of such non-performing party. Force Majeure shall not include strikes or collective bargaining disputes.*

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

If to the Contractor:

Lakeshore Recycling Systems (LRS)
Attn: Joshua B. Connell
6132 W. Oakton St
Morton Grove, IL 60053
Fax #: 773-685-6043
e-mail: jconnell@LRSrecycles.com

If to the City:

City of Wheaton
Attn: City Clerk
303 W. Wesley Street, Box 727
Wheaton, IL 60189-727
Fax #: 630-260-2017
e-mail: sbarrett-hagen@wheaton.il.us

18. 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.

19. 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.

20. Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, without giving effect to its conflict-of-laws rules. Exclusive jurisdiction for any litigation involving any aspect of this Agreement shall be in the Eighteenth Judicial Circuit Court, DuPage County, Illinois.

In Witness Whereof, the parties have entered into this Agreement this 25th day of July, 2016.

City of Wheaton, an Illinois municipal corporation

By Michael J. Gresk date 8/2/16
Michael J. Gresk, Mayor

Attest:

Sharon Barrett-Hagen
Sharon Barrett-Hagen, City Clerk

Lakeshore Recycling Systems (LRS)

By Joshua B. Connell date 7/28/16
Signature

Attest:

Mavis A. Poff